

No. 11147 2418

United States
Circuit Court of Appeals
For the Ninth Circuit.

COFFIN-REDINGTON COMPANY, a corporation,

Appellant,

vs.

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

OCT 30 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

Messrs. THOMAS, BEEDY, NELSON & KING,
315 Montgomery Street,
San Francisco, California.

Attorneys for Defendant and Appellant.

Mr. W. H. BRUNNER,
Office of Price Administration,
1355 Market Street,
San Francisco, California.

Attorney for Plaintiff and Appellee.

In the District Court of the United States North-
ern District of California Southern Division

No. 23628-R

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

COFFIN-REDINGTON & CO., a corporation, 311
Folsom Street, San Francisco, California,
Defendant.

COMPLAINT FOR INJUNCTION

1. In the judgment of the Price Administrator, the defendant has engaged in actions and practices which constitute violations of Section 4 (a) of the Emergency Price Control Act of 1942, as amended, (Pub. Law 421, 77th Cong., 2d Sess., c. 26, 56 Stat. 23), hereinafter called "the Act", in that defendant violated Maximum Price Regulation No. 445, as amended and revised, effective in accordance with the provisions of the Act; and, therefore, pursuant to Section 205 (a) of the Act, the Price Administrator brings this action to enforce compliance with the Regulation. [1*]

2. Jurisdiction of this action is conferred upon this Court by Section 205 (c) of the Act.

3. From and including August 14, 1943, there has been in effect, pursuant to the Act, Maximum Price Regulation No. 445, as amended and revised,

*Page numbering appearing at foot of page of original certified Transcript of Record.

establishing maximum prices for distilled spirits and wines.

4. Subsequent to August 14, 1943, defendant, doing business in the City and County of San Francisco, State of California, sold distilled spirits at prices higher than the maximum prices permitted by said Regulation.

5. Subsequent to August 14, 1943, defendant, doing business in the City and County of San Francisco, State of California, sold imported whiskey or domestic whiskey in case lots, and less, only on condition that the purchaser accept delivery also of and pay for one or more, or less, cases of imported or domestic rum, gin, tequila, vodka, or other beverages, including imported or domestic wines, in addition to the imported or domestic whiskey ordered and purchased by the purchaser, and said defendant subsequent to said date thereby sold imported whiskey or domestic whiskey at prices higher than the maximum prices permitted by said Regulation, as amended and revised.

Wherefore, the Administrator demands:

A. A final injunction enjoining defendant, its agents, servants, employees, attorneys, and all persons in active concert or participation with the defendant, from

Directly or indirectly selling or delivering distilled spirits and wines at prices in excess of the maximum prices established by Maximum Price Regulation No. 445, as amended and revised, or as hereafter amended or revised, [2] or otherwise violating said Regulation, or attempting or agreeing to do anything in violation thereof.

B. A final injunction enjoining the defendant, its agents, servants, employees, attorneys, and all persons in active concert or participation with the defendant, from

Directly or indirectly selling or delivering imported whiskey or domestic whiskey to purchasers who ordered the same and whose orders are accepted by defendant only on condition that such purchaser accept delivery also of and pay for imported or domestic rum, gin, tequila, vodka, or other beverages, including wines, or any other commodity; and from directly or indirectly selling or delivering imported whiskey or domestic whiskey, or other distilled spirits and wines, at prices in excess of the maximum prices established by Maximum Price Regulation No. 445, as amended or revised, or as hereafter amended or revised, or otherwise violating said Regulation, or attempting or agreeing to do anything in violation thereof.

C. Such other, further and different relief as to the Court may seem just and proper in the premises.

THOMAS C. RYAN

GEORGE A. FARADAY

[Endorsed]: Filed Aug. 28, 1944. [3]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant above named and answers the complaint on file herein as follows:

I.

Answering paragraph 1 of said complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the judgment of the Price Administrator; denies that it has engaged in any action or actions or practice or practices which constitute a violation or violations of Section 4 (a) of the Emergency Price Control Act of 1942, as [4] amended; and denies that it has violated Maximum Price Regulation No. 445, as amended and revised.

II.

Answering paragraphs 4 and 5 of said complaint, defendant denies each and every, all and singular, generally and specifically, the allegations contained therein.

Wherefore, defendant prays that:

1. The final injunctions demanded by plaintiff be denied;
2. The complaint filed herein be dismissed; and
3. Defendant be awarded such other relief as to the Court may seem just and proper in the premises.

THOMAS, BEEDY, NELSON &
KING

Attorneys for Defendant

Of Counsel

LOUIS S. BEEDY
JOHN BENNETT KING

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed Oct. 21, 1944. [5]

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED TO
PLAINTIFF BY DEFENDANT PUR-
SUANT TO RULE 33 OF THE FEDERAL
RULES OF CIVIL PROCEDURE.

The above named defendant, having heretofore on the 21st day of October, 1944, served upon plaintiff and filed with the Clerk of this Court its Answer to the Complaint for Injunction on file herein, hereby propounds the following interrogatories to said plaintiff:

1. State with reference to each alleged sale involved in paragraph 4 of the said complaint the following: [6]

(a) The date and place of sale.

(b) The name and address of the purchaser.

(c) The serial number of the seller's invoice or delivery order.

(d) The distilled spirits sold and delivered, specifying the variety, trade name, unit and amount.

(e) The unit price and total price charged and the maximum unit price and total price legally chargeable.

(f) The terms and conditions of sale, if any, not shown on the seller's invoice or delivery order.

(g) The name and address of the person or persons ordering the merchandise, the date on which it was ordered, and the name of the person or persons from whom it was ordered.

(h) If the merchandise was ordered orally, the

parties to the conversation during which the order was placed, the time and place of the conversation, the persons present, and a statement of the substance of the conversation.

(i) If the merchandise was ordered by writing, the date and serial number of the purchaser's requisition and the name of the person signing the same.

2. State with reference to each alleged sale involved in paragraph 5 of the said complaint the following:

(a) The date and the place of sale.

(b) The name and address of the purchaser.

(c) The serial number of the seller's invoice or delivery order.

(d) The whiskey and other beverages sold, specifying [7] as to each the variety, trade name, unit and amount.

(e) The unit price and total price charged and the maximum unit price and total price legally chargeable.

(f) The terms and conditions of sale, if any, not shown on the seller's invoice or delivery order.

(g) The name and address of the person or persons ordering the merchandise, the date on which it was ordered, and the name of the person or persons from whom it was ordered.

(h) If the merchandise was ordered orally, the parties to the conversation during which the order was placed, the time and place of the conversation, the persons present, and a statement of the substance of the conversation.

(i) If the merchandise was ordered by writing, the date and serial number of the purchaser's requisition and the name of the person signing the same.

3. State the section or sections and subdivision or subdivisions thereof, if any, of the Regulation mentioned in the said complaint which the defendant is alleged to have violated.

4. Do the acts set forth in paragraph 4 of the said complaint constitute alleged violations separate and distinct from those alleged in paragraph 5 thereof, or do the acts set forth in said paragraph 5 constitute a statement of the manner in which the alleged violations set forth in the said paragraph 4 occurred.

Wherefore, defendant demands that plaintiff answer, separately and fully, in writing and under oath, the foregoing interrogatories.

Dated this 28th day of November, 1944.

THOMAS, BEEDY, NELSON &
KING

Attorneys for Defendant.

[Endorsed]: Filed Dec. 26, 1944. [8]

[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES

In response to interrogatories propounded by defendant in the above entitled action, plaintiff sets forth the following:

1. The sales of which plaintiff complains in Paragraph 4 of said complaint were all made in the City and County of San Francisco, and were made to the following persons:

(a) I. N. Lasser, Manager, Carlos Wines & Liquors, 2080 Chestnut Street, San Francisco, California.

(b) Giovanni Mori, doing business as Gilman Liquor Store, 1316 Gilman St., Berkeley, Calif. [9]

(c) Mattie Parker, doing business as West Berkeley Pharmacy, 1523 San Pablo Ave., Berkeley, California.

(d) A. Ferroni, doing business as Transport Cafe, 1901 Union Street, San Francisco, California.

(e) Edith Gelsi, doing business as Gelsi's Place, 6278 Mission Street, San Francisco, California.

2. In each sale herein referred to, defendant delivered to said purchasers certain unwanted, unordered and slow-moving items of liquor, which items were invoiced and charged to the account of such purchasers and for which such purchasers were forced to pay. In all instances these unwanted items were added to the order.

3. There follows a schedule of the sales made above, keyed by sub-head to the various purchasers listed in Paragraph 1 above. The unwanted items on each invoice are designated with an asterisk (*) after the item on the schedule.

Pur-chaser	Date	Inv. No.	Item	Item Price	Inv.Total
(a)	6/30/44	46505	2 Cs Marin Rum Gold	\$75.14*	
			1 Cs P M de Luxe	36.09	
			1/2 Cs Hill & Hill	21.77	
			1/2 Cs Fitzgerald	18.96	
			1/2 Cs J. Baret Brandy	19.62	171.58
	2/ 9/44	21091	1 Cs Olympic Brand Filets of Anchovies	40.32*	40.32
(b)	2/26/44	41728	1/2 Cs Lord Calvert	18.22	
			1 Cs Olives Pur Sun	14.15*	
			1/2 Cs Anis Gorila	16.29	
			1/2 Cs Fernet Branca	13.75*	
			1/2 Cs Passionola Red	5.10*	67.51
(c)	7/28/44	47596	1/2 Cs Calvert Spec.	16.52	
			1 Cs Ravet Brandy	39.23*	55.75
	6/21/44	46053	1/2 Cs Calv. Lord	21.35	
			1/2 Cs Old Fitz	18.97	
			1 Cs Marin Rum Gold	37.57*	77.89
	5/25/44	45155	1/2 Cs Calv. Reserve	23.15	
			1/2 Cs Old Fitz	23.87	
			1/2 Cs Nautical Rum	21.27*	
			1/2 Cs Hermosa Tequila	21.66*	89.95
	3/ 8/44	42162	1/2 Cs Calv. Spec.	13.40	
			1/2 Cs Old Fitz	15.37	
			1 Cs Marin Rum Gold	29.76*	58.53
(d)	7/19/44	47033	3 Cs Luis Caballero	129.15	
			1 Cs Fitzgerald	37.93	
			5/12 Cs Walkers de Luxe (OO)	13.61	
			5/12 Cs Melwood	13.46	
			1/4 Cs Canadian Club	12.29	
			1/2 Cs Walkers de Luxe (86)	15.69	
			1 Cs Don Q Rum White	39.11*	
			1 Cs Marin Rum Gold	37.57*	
			1/4 Cs Bardinet Cor. de Cocoa	9.45	
			1/4 Cs. Sloe Gin Bardinet	10.06*	318.32
	5/27/44	45299	1 Cs Fitzgerald	37.93	
			1 Cs Three Feathers	40.23	
			1 Cs Banet Brandy	39.23*	
			1 Cs Marin Rum Heavy	37.58	154.97

Pur-chaser	Date	Inv. No.	Item	Item Price	Inv.Total
	6/29/44	46336	1 Cs Fitzgerald	\$ 37.93	
			1 Cs Baret Brandy	39.23	
			1/2 Cs Black & White	26.27	
			1/2 Cs Three Feathers	20.12	
			3 Cs Marin Rum Gold	112.71*	
			1/4 Cs Red Horse Sloe Gin	8.44*	244.70
	6/14/44	54830	5 Cs Anis Gorilla	169.75*	
			2 Cs Fitzgerald	75.86	
			1 Cs Walkers de Luxe	31.38	
			1 Cs J. Baret Brandy	39.23	316.22
	6/27/44	46277	10 Cs Fitzgerald	379.30	
			12 Cs Hermosa Tequila	501.48*	
			3 Cs Anis Gorilla	101.85*	982.63
(e)	6/23/44	46146	1 Cs Olympic Anchovies	31.75*	
			1/2 Cs Red Horse Slo Gin	16.88*	
			2 Cs Barardi Rum		
			Ambar Gold	77.54*	
			2 Cs Barardi Rum		
			Silver White	77.54*	
			1/2 Cs Havana Club Gold	24.36*	
			1/2 Cs Baret Brandy	19.62*	
			1/2 Cs Fitzgerald	18.97	266.66

Dated: December 5th, 1944.

GEORGE A. FARADAY

W. H. BRUNNER

Attorneys for Plaintiff

State of California

City and County of San Francisco—ss.

W. H. Brunner, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiff Price Administrator in the within entitled action and as such makes this verification in behalf of said Price Administrator. That the facts alleged in these answers to interrogatories have been developed by investigators of the Office of Price

Administration, and affiant is informed and believes, and alleges upon such information and belief, that they and each of them are true.

W. H. BRUNNER

Subscribed and sworn to before me this 7th day of December, 1944.

[Seal] NELL O'DAY

Notary Public in and for the City and County of San Francisco, State of California

My Commission Expires March 26, 1948.

Receipt of a copy of the within plaintiff's Answers to Interrogatories is hereby admitted this 8th day of December, 1944.

THOMAS, BEEDY, NELSON &
KING

Attorneys for Defendant

[Endorsed]: Filed Dec. 8, 1944. [12]

[Title of District Court and Cause.]

ORDER THAT INJUNCTION ISSUE

In this action plaintiff, Administrator of the Office of Price Administration, seeks an injunction, pursuant to Section 205 (a) of the Emergency Price Control Act of 1942, as amended against defendant, a wholesale drug and liquor concern. Specifically, plaintiff contends that defendant violated the provisions of Maximum Price Regulation No. 445, as amended and revised, which establishes maximum prices for distilled spirits and

wines, in that defendant sold whisky to certain purchasers only upon the condition that said purchasers also buy, in addition to the whisky, other commodities which defendant then had for sale. There is no question of any violation of price ceilings as to the individual commodities; the charge is that the total price received by the defendant for the whisky plus the unwanted [13] commodity, exceeded the maximum price established by the Regulation for the whiskey. The controlling section of the Regulation is Section 7.8 (b) (Amendment 15, effective May 8, 1944), which reads as follows:

“(b) Evasion. The provisions of this regulation shall not be evaded, whether by direct or indirect methods, in connection with an offer, solicitation, agreement, sale, delivery, purchase or receipt, of or relating to any commodity, or service covered by this regulation, alone or in conjunction with any other commodity or service or by way of finder’s fees, brokerage, commission, service, transportation or other charge or discount, premium or other privilege; by tying agreement, combination sales, or trade understanding; by any change in style or manner of packing; by requiring the buyer to purchase packaged distilled spirits or wine on a per drink basis; or in any other way. The specific enumeration of acts constituting evasion is illustrative but not exclusive.”

The Court finds, from the evidence, that the defendant has violated the Regulation and specifically by tying agreements and combination sales

prohibited in said Section 7.8 (b). The facts justify the restraint prayed for. Accordingly, it is hereby

Ordered that defendant, its agents, servants, employees, attorneys, and all persons in active concert or participation with the defendant, be and the same are hereby Enjoined from

Directly or indirectly selling or delivering imported whiskey or domestic whiskey to purchasers who ordered the same and whose orders are accepted by defendant only on condition that such purchaser accept delivery also of and pay for imported or domestic rum, gin, tequila, vodka, or other beverages, including wines, or any other commodity; and from directly or indirectly selling or delivering imported whiskey or domestic whiskey, or other distilled spirits and wines, at prices [14] in excess of the Maximum Price Regulation No. 445, as amended or revised, or as hereafter amended or revised, or otherwise violating said Regulation, or attempting or agreeing to do anything in violation thereof.

It is therefore Ordered that judgment be entered herein in favor of plaintiff, as prayed, on findings of fact and conclusions of law, the respective parties to pay their own costs.

Dated: April 19, 1945.

MICHAEL J. ROCHE

United States District Judge.

[Endorsed]: Filed Apr. 19, 1945. [15]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on regularly for trial in the above entitled Court, sitting without a jury, Honorable Michael J. Roche, judge presiding, W. H. Brunner and Richard Coblentz, by Richard Coblentz, Esquire, appearing for plaintiff, and Thomas, Beedy, Nelson & King, by Louis S. Beedy and John B. King, Esquires, appearing for defendant, and said action having been tried on the 1st day of March, 1945, and evidence both oral and documentary having been introduced, and said action having been submitted for decision, the Court, being fully advised now makes its findings of fact as follows: [16]

FINDINGS OF FACT

I.

Each and all of the allegations contained in Paragraph I, of the Complaint for Injunction on file in the above entitled action are true.

II.

Each and all of the allegations contained in Paragraph II, of said Complaint are true.

III.

Each and all of the allegations contained in Paragraph III, of said Complaint are true.

IV.

Each and all of the allegations contained in Paragraph IV, of said Complaint are true.

V.

Each and all of the allegations contained in Paragraph V, of said Complaint are true.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts, the Court finds that:

I.

Plaintiff is entitled to judgment that defendant, its agents, servants, employees, attorneys, and all persons in active concert or participation with the defendant be, and the same are hereby, enjoined from

Directly or indirectly selling or delivering imported whiskey or domestic whiskey to purchasers who ordered the same and whose orders are accepted by defendant only on condition that such purchaser accept delivery also of and pay for imported or domestic rum, gin, tequila, vodka, or other beverages, including [17] wines, or any other commodity; and from directly or indirectly selling or delivering imported whiskey or domestic whiskey, or other distilled spirits and wines, at prices in excess of the Maximum Price Regulation No. 445, as amended or revised, or as hereafter amended or revised, or otherwise violating said Regulation, or attempting or agreeing to do anything in violation thereof.

Judgment is hereby ordered to be entered accordingly.

Dated at San Francisco, California, this 10th day of May, 1945.

MICHAEL J. ROCHE

United States District Judge

Approved as to form, as provided in Rule 5 (d)

THOMAS, BEEDY, NELSON &
KING

By.....

Attorneys for Defendant

Not approved as to form, as provided in Rule 5 (d) of the Rules of Practice of the above entitled Court, for the reason that the foregoing proposed findings of fact are not stated specially as required by Section 52 (a) of the Federal Rules of Civil Procedure.

THOMAS, BEEDY, NELSON &
KING,

By LOUIS S. BEEDY

Attorneys for Defendant.

[Endorsed]: Lodged May 4, 1945. Filed May 10, 1945. [18]

In the District Court of the United States, Northern District of California, Southern Division

No. 23628-R

CHESTER BOWLES, Administrator, Office of Price Administration,

Plaintiff,

vs.

COFFIN-REDINGTON & CO., a Corporation, 311 Folsom Street, San Francisco, California,
Defendant.

JUDGMENT FOR PERMANENT INJUNCTION

The above entitled action came on regularly for trial in the above entitled Court, sitting without a jury, Honorable Michael J. Roche, judge presiding, W. H. Brunner and Richard Coblentz, by Richard Coblentz, Esquire, appearing for plaintiff, and Thomas, Beedy, Nelson & King, by Louis S. Beedy and John B. King, Esquires, appearing for defendant, and said action having been tried on the 1st day of March, 1945, and evidence both oral and documentary having been introduced and said action having been submitted for decision, and written Findings of Fact and Conclusions of Law, having heretofore been filed, and the Court being fully advised,

It Is Hereby Ordered, Adjudged and Decreed that:

Defendant its agents, servants, employees, attor-

neys [19] and all persons in active concert and participation with the defendant be, and they are hereby, enjoined from

Directly or indirectly selling or delivering imported whiskey or domestic whiskey to purchasers who ordered the same and whose orders are accepted by defendant only on condition that such purchaser accept delivery also of and pay for imported or domestic rum, gin, tequila, vodka, or other beverages, including wines, or any other commodity; and from directly or indirectly selling or delivering imported whiskey or domestic whiskey, or other distilled spirits and wines, at prices in excess of the Maximum Price Regulation No. 445, as amended or revised, or as hereafter amended or revised, or otherwise violating said Regulation, or attempting or agreeing to do anything in violation thereof.

Dated at San Francisco, California, this 10th day of May, 1945.

MICHAEL J. ROCHE,

United States District Judge.

Approved as to form, as provided in Rule 5(d).

THOMAS, BEEDY, NELSON &
KING,

By: LOUIS S. BEEDY,

Attorneys for Defendant.

[Endorsed]: Filed May 10, 1945. [20]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Coffin-Redington & Co., a corporation, the defendant above named, hereby appeals to the United States Circuit Court of Appeals, Ninth Circuit, from the final judgment entered in this action on May 10, 1945.

THOMAS, BEEDY, NELSON &
KING,

Attorneys for Defendant.

Of Counsel:

LOUIS S. BEEDY,
JOHN BENNETT KING.

[Endorsed]: Filed July 12, 1945. [21]

[Title of District Court and Cause.]

ORDER EXTENDING TIME

Good Cause Appearing Therefor, it is hereby Ordered that the defendant above named may have to and including the 29th day of September, 1945, in which to file the Record on Appeal with the Circuit Court of Appeals for the Ninth Circuit.

Dated: August 17th, 1945.

ST. SURE,

Judge of the United States
District Court.

Approved Aug. 17, 1945.

HERBERT H. BENT,
Attorney for Plaintiff.

[Endorsed]: Filed Aug. 17, 1945. [22]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Defendant above named hereby designates the portions of the record, proceedings and evidence which it desires included in the Record on Appeal:

1. Complaint for Injunction;
2. Answer of Defendant,
3. Interrogatories;
4. Answers to Interrogatories;
5. Reporter's Transcript;
6. All evidence introduced at the trial;
7. Findings of Fact and Conclusions of Law;
8. Order that Injunction Issue;
9. Judgment for Permanent Injunction;
10. Notice of Appeal;
11. Order Extending Time to File Record on Appeal with Circuit Court of Appeals;
12. Stipulation as to Reporter's Transcript;
13. Statement of Points upon Which Defendant will Reply Upon Appeal;
14. Designation of Contents of Record on Appeal.

Dated at San Francisco, California, this 29th day of August, 1945.

THOMAS, BEEDY, NELSON &
KING,

Attorneys for Defendant.

Receipt of a copy of the foregoing is hereby admitted this 29th day of August, 1945.

HERBERT H. BENT,
Attorney for Plaintiff.

[Endorsed]: Filed Aug. 30, 1945. [24]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
DEFENDANT WILL RELY UPON APPEAL

Defendant proposes, upon its appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to rely upon the following points as error:

I.

There was insufficient evidence to support the finding of the trial court that the allegations contained in paragraph I of the Complaint for Injunction were true.

II.

There was insufficient evidence to support the finding [25] of the trial court that the allegations contained in paragraph IV of the Complaint for Injunction were true.

III.

There was insufficient evidence to support the finding of the trial court that the allegations con-

tained in paragraph V of the Complaint for Injunction were true.

IV.

The trial court erred in concluding as a matter of law that plaintiff was entitled to judgment that defendant, its agents, servants, employees, attorneys, and all persons in active concert or participation with defendant should be enjoined from directly or indirectly selling or delivering imported whiskey or domestic whiskey to purchasers who ordered the same and whose orders were accepted by defendant only on condition that such purchaser accept delivery also of and pay for imported or domestic rum, gin, tequila, vodka, or other beverages, including wines, or any other commodity; and from directly or indirectly selling or delivering imported whiskey or domestic whiskey, or other distilled spirits and wines, at prices in excess of the Maximum Price Regulation No. 445, as amended or revised, or as hereafter amended or revised, or otherwise violating said Regulation, or attempting or agreeing to do anything in violation thereof.

THOMAS, BEEDY, NELSON &
KING,

Attorneys for Defendant.

Receipt of a copy of the foregoing is hereby admitted this 28th day of August, 1945.

HERBERT H. BENT,

Attorney for Plaintiff.

[Endorsed]: Filed Aug. 30, 1945. [26]

[Title of District Court and Cause.]

STIPULATION AS TO REPORTER'S
TRANSCRIPT

It is hereby stipulated, in accordance with Rule 21 of General Rules of Practice of the above-entitled Court, that only one copy of the Reporter's Transcript need be filed.

Dated at San Francisco, California, this 29th day of August, 1945.

HERBERT H. BENT,
Attorney for Plaintiff.

THOMAS, BEEDY, NELSON &
KING,
Attorneys for Defendant.

[Endorsed]: Filed Aug. 30, 1945. [27]

District Court of the United States, Northern
District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 27 pages, numbered from 1 to 27, inclusive, contain a proceedings in the case of Chester Bowles, Administrator, Plaintiff, vs. Coffin-Redington & Co., De-

fendant, No. 23268-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$3.20 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 21st day of September, A.D. 1945.

[Seal]

C. W. CALBREATH,
Clerk.

M. E. BUREN,
Deputy Clerk. [28]

In the Southern Division of the United States District Court, in and for the Northern District of California

Before: Hon. Michael J. Roche, Judge.

No. 23628-R

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

COFFIN-REDINGTON & CO., a Corporation, 311
Folsom Street, San Francisco, California,
Defendant.

Thursday, March 1, 1945

Counsel Appearing:

For Plaintiff: Richard Coblentz, Esq.

For Defendant: Louis S. Beedy, Esq., John B.
King, Esq.

The Clerk: Bowles v. Coffin-Redington.

Mr. Coblentz: Ready.

Mr. Beedy: Ready.

Mr. Coblentz: If your Honor please, this is an action for an injunction. It is the first of a series of cases which involves not a violation of a ceiling price of a particular item, but a tie-in sale of liquor, for example if the ceiling price [1*] of whisky is \$5 and the ceiling price of gin, for example, was \$5,

*Page numbering appearing at top of page of original Reporter's Transcript.

and the ceiling price of whisky is \$5, and a person asks for whisky alone and is refused, and he is given whisky and gin for \$10, the sum of the two ceiling prices, it is our position that that is requiring him to pay \$10 for the whisky, which is over the \$5 ceiling.

The Court: Was all of the liquor within the ceiling, each separate item?

Mr. Coblentz: I don't want to be tied down that it was in this case, but for the purpose of this case I will make the stipulation that each item, itself, was within the ceiling. Is that satisfactory?

Mr. Beedy: That is the fact.

Mr. Coblentz: For the purpose of this case we will so stipulate.

The Court: Is there any question about it?

Mr. Coblentz: I think there were one or two items, but we are not concerned with that.

The Court: Before we go any further, what is the matter now before the Court, and what is the question for final decision?

Mr. Coblentz: As to whether or not the defendant refused to sell items of liquor at the ceiling price but required that they purchase other items that they did not want and paid for them, so that the amount paid is greater than the ceiling for [2] the item which was desired.

The Court: In violation of the regulations?

Mr. Coblentz: In violation of the regulations.

The Court: All right, read the regulations as to the violation.

Mr. Coblentz: Here is one with all of the amend-

ments attached to it, and that is section 5.3, and section 5.4, subdivision (b).

Mr. Beedy: You mean section 7.4(a), subdivision (b)?

Mr. Coblentz: Well, that may also be involved, but the matter of figuring the ceiling price for wholesalers is provided for in section 5.4.

The Court: Read it.

Mr. Coblentz: "A wholesaler's initial maximum price per case to retailers shall be his net cost per case (figured according to section 5.3), for his latest base purchase of the item, or if he made no base purchase of the item since March, 1942, his net cost per case (figured according to section 5.3) for his most recent purchase of the item from any supplier, multiplied by the percentage mark-up for the item being priced, as follows."

Does your Honor want the rest of it?

The Court: I want to get your thought, keeping in mind the issue we have involved and the relation to our problem.

Mr. Coblentz: One of the items, we will show, has a [3] ceiling of \$5, and a customer wanted to buy that for \$5, and the defendant refuses to make the sale——

The Court: Is there any legal obligation for him to sell it?

Mr. Coblentz: No. However, the defendant proceeds to say that if you will buy gin for \$5 we will then supply you with the whisky you want for \$5. The customer does not want the gin but he wants the whisky so badly that he buys the two items,

thereby paying \$10 for the whisky and for an item that he does not want.

The Court: The ceiling is \$5 and he is willing to do that, what are we going to do about it?

Mr. Coblentz: I think we ought to enjoin that.

The Court: Where is the law that justifies us in doing it, if it is true that the gin is sold at ceiling and the whiskey sold at ceiling? Is that true?

Mr. Coblentz: That is true.

The Court: I will give you a record on it. Proceed. You are asking for an injunction?

Mr. Coblentz: That is correct.

The Court: Proceed.

Mr. Coblentz: I will call Mrs. Parker.

MATTIE R. PARKER,

called as a witness by the Plaintiff; sworn.

The Clerk: Will you state your name to the Court, please? [4]

A. Mattie R. Parker.

Mr. Coblentz: Q. Mrs. Parker, are you the owner and manager of a pharmacy in Berkeley known as the West Berkeley Pharmacy?

A. I am.

Q. At 1523 San Pablo Avenue? A. Yes.

Q. Do you handle, do you sell at retail liquor?

A. I do.

Q. For how long have you been doing that?

A. About 8½ years.

(Testimony of Mattie R. Parker.)

Q. Have you in the past year purchased any liquor from Coffin-Redington? A. I have.

Q. Did you receive liquor during that time which you did not order?

A. Well, I received anything that I could get, all of the goods that were allocated—I took what I could get without question.

Q. I will show you some invoices which I will identify as we go along, of Coffin-Redington. One is dated, the date of the order is July 25; the date of the invoice is July 28. It invoices you for one-half case of Calvert Special and one case of Ravert Brandy. Did you order the brandy on that invoice?

A. Well, I did not order every one. All of that stuff was allocated at that time.

Q. Did you want either of them?

A. Yes, I wanted the brandy.

Q. You wanted the brandy and also the whisky?

A. Yes.

Q. There is an invoice of June 21 for half a case of Calvert Lord, $\frac{1}{2}$ case Old Fitz, and a case of Marin Rum Gold. Did you want all of those?

A. Well, I did not refuse any of them. [5]

Q. Did you order any of them?

A. I did not order them, I took what was allocated to me.

Q. Did you want the rum?

A. I did not refuse any of it. Naturally, whisky being the biggest seller, and they being out of whisky, I did not refuse any of it.

(Testimony of Mattie R. Parker.)

Q. Here is one of May 25, 1/2 case Calvert Reserve, 1/2 case Old Fitz, 1/2 case Nautical Rum, 1/2 case Hermosa Tequila. A. Yes.

Q. Did you order those items?

A. No, I took whatever I could get, whatever I was allocated.

Q. Did you want each of them?

A. Well, I wanted to get anything I could get, but, as I said before, I preferred to have whisky.

Q. Here is one of March 2, for 1/2 case of Calvert Special, 1/2 case Old Fitz and 1 case Marin Rum Gold. Did you order any of those?

A. No, I took whatever I could get.

Q. Do you have any of those items left now from this invoice?

A. I might have, I don't know, but I have ordered others since then.

Q. Of Tequila? A. Yes.

Q. You ordered that?

A. I have ordered Tequila since then.

Q. Do you remember a visit from an investigator of the Office of Price Administration in August, last year? A. Yes.

Q. Do you remember his name?

A. No, I do not.

Q. Would you recognize it as Frank Richardson?

A. I think I [6] remember hearing that name.

Q. Do you remember making a written statement for him?

(Testimony of Mattie R. Parker.)

A. I remember he wrote out something and asked me to sign it and wanted my inventory.

Q. You mean inventory, or invoices?

A. Invoices.

Q. You read that over and signed it?

A. I read that over and signed it. He insisted on my doing it and I did not refuse.

Q. Do you recall that that statement said that in the purchases of my merchandise for this store I many times took merchandise that I did not order or want. I just took what they sent me in order to get my allotment of whisky. In several instances merchandise was sent me that I would not have ordered, such as rum and gin.

Mr. Beedy: If your Honor please, that is cross-examination of his witness.

Mr. Coblentz: It is, certainly. It is obvious that this witness has been reached.

The Court: Just what do you mean by that, "has been reached?"

Mr. Coblentz: I mean that the defendant has through its agents or in some manner approached these witnesses and told them, "Now you are in business, and if you ever expect to get any more whisky from us or from anyone else you will have to change your testimony, and you will have to state that the Government Agents came to you and told you if you did not sign you will [7] get into a lot of trouble with the Government," and they demanded in this case, as the record will show, answers to interrogatories saying who the witnesses would be, showing what

(Testimony of Mattie R. Parker.)

sales had been made, and thereafter they caused to be published in the "Chronicle" in a very prominent place,—I do not mean that they influenced the "Chronicle," but they got it to their attention in such a way as to have it published, so that not only this defendant would not supply them, but none of the others in the wholesale business would if they did testify.

The Court: You have made a statement. Do you intend to prove that?

Mr. Coblentz: Yes, I will, by the testimony that we will put on here this morning.

The Court: Proceed and prove it.

Mr. Coblentz: Q. The question is, do you recall having made that statement?

A. I do not recall exactly making that statement, no.

Q. Well, if I show it to you——

A. (Interrupting) But I signed what he wrote down; you know, in the store I am busy, I am there alone, I have two, three, four or five or six people in the store at all times, and whenever a salesman comes in, or in this case where the OPA man came in, like that, I take a minute to wait on a customer, and I could not concentrate and give him my full thought about that. He wrote out something and asked me to sign it. I hurriedly glanced through it, and [8] I thought I must sign it, there is nothing in there that is harmful in any way to me, or anyone else, and I signed it, and then proceeded to forget about it.

(Testimony of Mattie R. Parker.)

Mr. Coblentz: I think that is all from this witness.

Mr. Beedy: I thought he was going to prove that Mrs. Parker was reached.

The Court: We will have to get through with the witness. Proceed.

Cross Examination

Mr. Beedy: Q. Mrs. Parker, how long have you been buying liquors from Coffin-Redington-

A. For sometime; it was 8½ years last August.

Q. And has Mr. Duffy, their salesman, been calling on you for liquor orders since about August of 1944?

A. Yes.

Q. You do a drug business, as well as a liquor business?

A. Yes.

Q. It had been the practice to send you orders of drugs and liquors that they thought that you wanted, prior to that time, isn't that so?

A. Yes.

Q. And you knew, did you not, that if any item was sent to you, whether drugs or liquor, you had the privilege of returning it if you did not want it?

A. Surely.

Q. And from time to time you did return items of liquor and drugs that you did not want, isn't that so?

The Court: What is your answer? The reporter must get down your answer.

A. Yes. [9]

Mr. Beedy: Q. Now, it is a fact, is it not, Mrs.

(Testimony of Mattie R. Parker.)

Parker, that in 1942 and later than that whisky became very scarce; isn't that so?

A. That is right.

Q. And if you wanted to continue in the liquor business you had to get some other type of alcoholic beverage to sell to your customers. Isn't that so?

A. That is right.

Q. And isn't that the reason that you bought rum and Tequila and brandy and these other items that are spoken of? A. Yes.

Q. You bought them many times after the orders that counsel has referred you to, isn't that so?

A. Yes.

Mr. Beedy: That is all, Mrs. Parker.

Redirect Examination

Mr. Coblentz: Q. I will ask you, Mrs. Parker, when was the last time that Mr. Duffy called on you?

A. Two weeks ago.

Q. And prior to that?

A. He called on me every two weeks.

Q. Weren't some of these orders made over the telephone? A. What do you mean?

Q. The orders that you gave to Coffin-Redington.

A. Oh, yes, I called on them every time I had orders in the meantime.

Q. Then they sent you some without any orders?

A. Well, they sent me all that list that is on the allocation list, they sent it out whenever it came in.

(Testimony of Mattie R. Parker.)

Q. If that is the case, what did Mr. Duffy call on you for?

A. Why does any salesman call a place of business for?

Q. I am asking you the question.

A. Well, that is what a salesman [10] is for, to call on a house every so often and keep in contact with the house, and present their new goods.

Q. When was the last time that you returned any liquor to Coffin-Redington?

A. I have not returned any liquor, I do not think I returned any liquor, as I was keeping all I could get.

Mr. Coblentz: That is all.

Mr. Beedy: That is all.

A. FERRONI,

called as a witness by plaintiff, sworn.

The Clerk: Q. Will you state your name to the Court? What is your name?

A. A. Ferroni.

Direct Examinatoin

Mr. Coblentz: Q. Mr. Ferroni, you run a restaurant in San Francisco called the Transport Cafe, located at 1901 Union Street, San Francisco?

A. Yes.

Q. How long have you been in business?

A. About fourteen years.

(Testimony of A. Ferroni.)

Q. You have been previously an owner?

A. I was part owner once, for one year.

Q. When was that?

A. In 1940, I think.

Q. Do you recall making purchases within the last year from Coffin-Redington, of liquor?

A. Yes, I did business with Coffin-Redington.

Q. When you ordered you did order some whisky from them? A. Sure. [11]

Q. Were you told at that time that you could not have any whisky without buying other liquor?

A. No.

Q. How did you make your purchases?

A. What do you mean?

Q. Did you order them over the telephone, or did you have a salesman come in?

A. No, they came over every couple of weeks, they passed by and I ordered some more stuff every two weeks.

Q. Who was it that would come in?

A. Levy.

Q. A man by the name of Levy? A. Yes.

Q. Didn't he tell you in June of last year that if you wanted to make a deal he would let you have 10 cases of Fitzgerald Whisky if you took 12 cases of Hermosa Tequila and 3 cases of Anis Gorilla?

A. He didn't tell me that. I say I would like to have 10 cases of whisky, and we talked and talked, and he asked me if I wanted a dozen cases of Tequila, and 2 or 3 cases of the Anis Gorilla.

(Testimony of A. Ferroni.)

Q. Haven't you any recollection of what he made you take?

Mr. Beedy: I object to that as there is no foundation laid that he made him take anything that he did not want. I ask that that go out.

The Court: It may go out.

A. What he says, "Do you want to take any Anis Gorilla, about two or three cases." I say I will buy that, and when he talk about Tequilla, I buy that. I will tell you, they don't force me to buy anything.

Mr. Coblentz: I will ask that the last statement go out [12] as the conclusion of the witness.

The Court: I will allow it to stay in. Develop what the facts are.

Mr. Coblentz: Q. Do you recall having been visited by an investigator of the Office of Price Administration in August of last year? A. Yes.

Q. Do you recall what conversation you had with him?

A. Well, in the conversation he told me they forced me to buy the Tequila, one thing or another, otherwise I don't get the whisky, but they never forced me to buy Tequila, because otherwise they don't give me any whisky.

Q. Was that your entire conversation with him?

A. That is all.

Q. Do you recall having signed this statement?

A. Well, he wanted me to sign, and he says, "There is no harm to sign." I didn't want to sign because it is a fact that they never forced me to buy

(Testimony of A. Ferroni.)

something I did not need; for the last three years I didn't do that at any time.

Q. Do you recall the name of this investigator?

A. Well, I know it is that fellow, there, I don't remember his name.

Q. Is this the gentleman that you refer to?

A. Yes.

Q. That is Mr. Richardson?

A. Yes. He told me that he was from the Government and he wanted me to sign this statement, and I didn't want to sign, that didn't mean nothing to me, and I said I didn't want to cause them any trouble because they treat me nice. [13]

Q. I show you an invoice.

Mr. Beedy: Which one is that?

Mr. Coblentz: Invoice of July 11th. Do you recall receiving these items? A. Yes.

Q. There are three cases of Louis Caballero. What is that? A. That is brandy.

Q. I case Fitzgerald. That is whisky?

A. That is whisky.

Q. 5/12 of a case of Walker's de luxe. That is also whisky? A. Yes.

Q. 5/12 of a case of Melwood. What is that?

A. That is whisky, too.

Q. 1/4 case of Canadian Club, 1/2 case Walker's de luxe, 1 case Don Q. Rum White, 1 case Marin Rum Gold, 1/4 case Bardinet Cor. de Cocoa, 1/4 case Sloe Gin Bardinet. Did you use that Sloe Gin Bardinet in your coffee royals?

A. No, you can't use that in coffee royals.

(Testimony of A. Ferroni.)

Q. This is the invoice of May 27. That shows one case of Fitzgerald, one case of Three Feathers, one case of Banet Brandy, one case of Marin Rum Heavy. Did you order that rum?

A. That shows the stuff I order.

Q. I am going back to the invoice of July. Did you order that Don Q Rum White? A. Yes.

Q. And the Marin Rum Gold?

A. Yes, I ordered it.

Q. Now, here is one of June 29, 1 case of Fitzgerald, 1 case of Baret Brandy, $\frac{1}{2}$ case of Black and White, $\frac{1}{2}$ case Three [14] Feathers, 3 cases of Marin Rum Gold, and $\frac{1}{4}$ case of Red Horse Sloe Gin. Did you order that rum and that gin? A. Yes.

Q. And on June 14, five cases of Anis Gorilla?

A. Yes.

Q. You used that in coffee royals?

A. I used it in coffee royals.

Q. 2 cases of Fitzgerald, 1 case of Walker's de luxe, and 1 case of J. Baret Brandy. A. Yes.

Q. And on June 27, 10 cases of Fitzgerald, 12 cases of Hermosa Tequila, and 3 cases of Anis Gorilla. That is on June 27th you ordered 3 cases of Anis Gorilla and then 5 more on June 14?

A. Yes.

Q. So that in thirteen days, a little less than two weeks, you used up 5 cases of Anis Gorilla, a drop at a time, in coffee royals?

Mr. Beedy: I object to that. He has not said that he used up 5 cases or 8 cases. He said he bought them. We are talking about his purchases of them.

(Testimony of A. Ferroni.)

The Court: How many drops do they put in a coffee royal?

Mr. Coblentz: Mr. Ferroni told me they put in one drop.

Q. Didn't you tell me yesterday that you used one drop in coffee royals? A. More than one drop.

Q. Two drops? A. Yes.

Mr. Coblentz: That is all.

Cross Examination

Mr. Beedy: Q. Mr. Ferroni, how long have you been purchasing [15] liquor from Coffin-Redington?

A. About two years, something like that.

Q. Who is the salesman that calls on you from Coffin-Redington Company? A. Levy.

Q. Mr. Morris Levy? A. Yes.

Q. How often does he call?

A. Every two weeks.

Q. Now, you signed all of those orders that Mr. Coblentz has shown you, didn't you? A. Yes.

Q. Isn't it a fact, Mr. Ferroni, that if you did not want any of the articles that were on those orders you could have told Mr. Levy so and he would take it off? Isn't that right?

A. Tell me that again.

Q. Strike out that question and I will ask another.

Do you remember buying on June 29, 1944, Mr. Ferroni—that is one of the orders that Mr. Coblentz just showed you—3 cases of Marin Rum Gold?

A. Yes.

(Testimony of A. Ferroni.)

Q. Do you remember that next day you called up Coffin-Redington Company and Mr. Levy and said to him that you did not want 3 cases, all you wanted was 2 cases?

A. No, I never called up.

Q. You never did? Did you call up and tell him instead of three cases you wanted two cases, and to take off one case?

A. I don't remember.

Q. You don't remember?

A. I don't remember. I don't think I called up.

Q. Your recollection is, then, that you received all of these [16] items and used them in your business, is that it?

A. Yes.

Q. Now, it is a fact, is it not, Mr. Ferroni, that you do have a large business in coffee royals?

A. Yes.

Q. What is a coffee royal? Isn't that coffee to which has been added liquor of some kind?

A. Coffee with whisky, rum, brandy or anything you like.

Q. Whisky, rum or brandy? A. Yes.

Q. A liqueur? A. Yes.

Q. And some Anisette and things of that kind?

A. Yes.

Q. And you have a large sale of coffee royals in your neighborhood? A. Yes.

Q. Whisky became scarce, didn't it, Mr. Ferroni, along in the latter part of 1942 and '43—whisky was getting harder to get, isn't that so?

A. Yes.

(Testimony of A. Ferroni.)

Q. And if you are going to stay in the liquor business isn't it a fact that you had to get some kind of alcoholic beverage as a substitute for whisky if you were going to keep your customers?

A. Well, maybe whisky and all that stuff got pretty scarce, but sometimes I have forty or fifty people come over there in one night and they don't buy anything only take a coffee royal.

Q. In other words, you have forty or fifty customers every evening that come in there for coffee royals? A. Yes.

Q. You add whisky, if you have it, or brandy, or tequila, or anything you have? A. Yes. [17]

Q. You have plenty of storage space out there, don't you, where you can keep all of these things until the time comes when you want to use them in the course of your business, isn't that right?

A. Yes.

Q. It is a fact, is it not, Mr. Ferroni, that you were often sold whisky alone without any other items?

Mr. Coblentz: If your Honor please, I think that question should be more specific as to time.

The Court: Fix the time.

Mr. Beedy: Well, around the middle of 1944, the time we are concerned with in this case, he came to see you as a salesman, you wanted only whisky and he took your order for whisky without rum or brandy or anything else, isn't that so?

A. Different times I give orders for just whisky.

Q. Just to refresh your recollection, I am

(Testimony of A. Ferroni.)

showing him, Mr. Coblentz, an order dated August 9, 1944, in which Mr. Ferroni bought 15 cases of Three Feathers, and there are no other items on it. I show you an order, Mr. Ferroni, that is your signature, is it not?

A. Yes, I bought this on the 9th of August.

Q. That is the invoice, they sold you 15 cases of Three Feathers? A. Yes.

Q. Three Feathers only?

A. Nothing else, just the whisky.

Q. Isn't it a fact that there were other occasions that they sold you only whisky when whisky was the only thing you wanted? A. Yes. [18]

Q. Of course, you know, and he told you that whisky was allocated, they did not have whisky to meet the entire demand, they had to allocate it amongst customers, isn't that so? A. Yes.

Q. And there were times when he let you have nothing but whisky, isn't that so? A. Yes.

Q. All you wanted of it? A. Yes.

Mr. Beedy: That is all, your Honor.

Redirect Examination

Mr. Coblentz: Q. Mr. Ferroni, do you recall the date of the visit of the OPA investigator to your place? Do you remember the date?

A. I don't remember, it is many months ago, but I don't remember the date.

Q. Do you recall that after Mr. Levy visited you—— A. I never told him that.

Q. Do you recall giving the order that appears

(Testimony of A. Ferroni.)

on this invoice that Mr. Beedy just showed you?
Do you remember ordering this?

A. 15 cases of Three Feathers, yes.

Q. It shows the date of the order as August 8th. Is that the date that you ordered it?

A. No, that is the invoice.

Q. The invoice is dated August 9th. Did you order that on August 8th?

A. He came to my place but I don't remember the exact date.

Q. That is correct, as far as you remember?

A. Yes.

Mr. Coblentz: We offer that in evidence.

Mr. Beedy: No objection. [19]

The Court: It may be admitted and marked.

(The invoice of August 9th was marked
Plaintiff's Exhibit 1.)

(Testimony of A. Ferroni.)

PLAINTIFF'S EXHIBIT No. 1

COFFIN-REDINGTON CO.

Wholesale Liquor Merchants

311 Folsom St.

[Stamp] : H.C.D.

Oakland San Francisco Reno, Nev.

Phone Douglas 2952

Salesman : M. Levy Date Ordered 8/8/44 Register Number 48062

Invoice Date Aug. 9, 1944 Terms 15 Days

Transport Cafe

1901 Union Street

San Francisco, Calif.

[Circled L marked opposite] : Stamps 20c

Checker Written By Credit Approx-

Shipped Via Ship When

[Stamped] : W.R.A.

[Circled in Pencil] : 31

Office Use Only Sect. Clerk 1

[Circled X mark—O✓ in red pencil]

Quan.	Unit	Customer's Order No.	Size	Price	Disc.	539.55*	Code
15	Cases	Three Feathers 3597*	55	4023	Net	603.45	9

Wine Gals. 36.00

603.45

539.55*

A. Ferroni Nu

State License No. P-3264-G

We guarantee that the articles of wines, liquors, food, and drugs mentioned herein are not adulterated or misbranded within the meaning of the Federal Food and Drug Act, June 30, 1906, as amended and the California Pure Food and Drug Act, March 11, 1907, while contained in original unbroken packages.—Coffin-Redington Co.

* Figures in red.

MRS. EDITH GELSI,

called as a witness by plaintiff; sworn.

The Clerk: Will you state your name to the Court?

A. I am Edith Gelsi.

Mr. Coblentz: Q. Mrs. Gelsi, you operate a tavern in Daly City? A. Correct.

Q. What is the name of your tavern?

A. Gelsi's Tavern.

Q. That is 6278 Mission Street?

A. Correct.

Q. How long have you been operating?

A. It will be nine years this coming July.

The Court: Is it run in your name?

A. Under my own name.

Mr. Coblentz: Your husband helps you manage it?

A. In the evening.

Q. He speaks Italian and a little broken English, is that correct? A. Yes.

Q. But you are the owner?

A. I am the owner.

Q. Do you recall purchasing liquor from Coffin-Redington in June of last year?

A. In the early part of June, yes.

Q. Do you remember the name of the man who called on you? Did a man call on you?

A. Yes, he calls on me every two weeks? [20] his name is Mr. Guito.

Q. Is he the gentleman that called on you in June last year? A. Yes, Mr. Guito.

(Testimony of Mrs. Edith Gelsi.)

Q. That is the occasion when you bought some anchovies? A. Correct.

Mr. Beedy: I object to going into the question of anchovies because it is outside of the issues made by the complaint.

Mr. Coblantz: Your Honor, in this case the complaint alleges that they were required to buy other items than alcoholic beverages in order to get whisky. I am merely identifying the particular occasion.

Mr. Beedy: The purpose of that is to fix the time, is that it?

Mr. Coblantz: Yes.

Q. Will you tell the Court in your own language, as well as you can remember, what conversation you had with Mr. Guito at that time? First, let me ask you when, as near as you remember, did that conversation take place, the date?

A. I don't remember the date, at all. All I know is it was the last part of June.

Q. Last year? A. Yes.

Q. Do you remember the time of day?

A. Well, it was around noon time, between eleven and twelve o'clock, that is the time he always comes around because my husband is there.

Q. Where did that conversation take place?

A. That was in my [21] tavern, I was behind the counter, and my husband was in a back room, and he called on me every Monday, and as he came in——

(Testimony of Mrs. Edith Gelsi.)

Q. Just a moment. Was there anyone else present besides you and your husband and Mr. Guito?

A. There were a few customers in the place, I don't remember who was there, how many I don't know.

Q. Now, will you tell the Court the conversation, what he said, what you said, and what your husband said?

A. Mr. Guido walked in the door and he said, "Good morning," and I said, "How are you?" And he said, "Fine, thank you," and he said, "How is your husband," and I said, "Fine, he is in the back room," so I called for my husband, so my husband comes in the room, into the tavern, and my husband started talking to him, and he said, "Have you any liquor today, any whisky today?" And he says, "Yes, but not much," and my husband says, "What have you got to sell?" And he said, "We have got some anchovies." My husband said, "We don't need anchovies, we have no grocery store around here and this is a tavern," and so my husband said, "What else have you got besides anchovies?" And he says, "Couldn't you use some anchovies?" And so my husband said, "Where is my wife?" And he talked to me and he says, "You can send me some." And so my husband said, "What else have you got?" So he opened up his show case, his suitcase, and he read out what he had down in his store, and so my husband asked him, "Have you [22] any whiskey?" And he said, "We are very low on whiskey." He said at that time it was very scarce, and so he went through the

(Testimony of Mrs. Edith Gelsi.)

list from A to Z what he thought he could sell and what we could use at the present time, and we said he had a little of everything else on the shelf, and my husband said, "How about some whiskey." And he said, "Well, I can sell you half a case." And then he made up the statement, and the statement was signed and he walked out. He never had much to say.

Mr. Coblentz: That is all.

Mr. Beedy: The invoice you are referring to is around or a little after the middle of June, was it not? The date is the 23rd, so it was a little past the middle of June.

Mr. Coblentz: That is the date of the delivery? Isn't that the date of delivery?

Mr. Beedy: No, that is the date you put in here in answer to the interrogatories that we propounded, so you fixed the date of the invoice as 6/23/44, and the invoice number was 46146.

Mr. Coblentz: The conversation was had before the invoice.

Mr. Beedy: I think that is so. It was around the middle of June, or after that.

Cross-Examination

Mr. Beedy: Q. Now, how long have you been purchasing liquor from Coffin-Redington & Company?

A. Well, it will [23] be nine years I think in July, and I have been living here for the last thirty years, and all the business I have had with the

(Testimony of Mrs. Edith Gelsi.)

company they always gave me wonderful service. That is the least I can say about them.

They never forced me to do anything.

Q. They never forced you to take anything?

A. No, that is one thing they never did.

Q. So you voluntarily purchased everything that is on all of these invoices? A. Yes.

Mr. Coblentz: I object to that. That is for the Court to determine, whether the purchase was a voluntary one.

The Court: The testimony on direct examination did not indicate anything other than a voluntary order. I may be in error about that.

Mr. Coblentz: If Your Honor please, I submit that when a salesman comes in and is asked for some whiskey and he says whiskey is very short, what else can you use, and it is said my shelves are filled with everything else, and all I need is the whiskey, and he says what else have you got, and he says, well, can you use some anchovies, and he says this is not a grocery store, and he goes down the list and says won't you take this and won't you take that, and then afterwards he discovers that he has some whiskey that he did not have in the beginning, that is a violation.

Mr. Beedy: There was a case of anchovies that was in [24] the list, and Mrs. Gelsi testified that she and her husband talked and she bought them for their own use, and for what she could sell to her customers. That is what she said.

(Testimony of Mrs. Edith Gelsi.)

The Court: How much liquor was there in this transaction?

Mr. Coblentz: The invoice says one case of Olympic Anchovies.

The Court: How much liquor?

Mr. Coblentz: One and a half case of Red Horse Slow Gin, two cases of Baradi Rum Ambar Gold, two Barardi Rum Silver White, one-half case of Havana Club Gold, one-half case of Baret Brandy, and one-half case of Fitzgerald.

The Court: Those are all modern brandies.

Mr. Beedy: The Barardi is one of the oldest brandies in the rum business, and everybody wants it. It is one of the scarcest.

The Court: Is that all from this witness.

Mr. Beedy: I just want to bring out this—you ordered these anchovies?

A. Yes, my husband used them.

Q. Didn't you use them yourself?

A. Some, but they are a small can, No. 2, and now there are only two left.

Q. Two cans out of a case? A. Yes.

Q. Those are two-ounce cans?

A. I don't know just exactly, but they are small cans.

Q. You wanted those, didn't you?

A. Yes. [25]

Q. And you signed all of these orders voluntarily, or your husband did?

A. Yes, my husband did the signing, but I take

(Testimony of Mrs. Edith Gelsi.)

everything in. I receive all the merchandise that comes in, because he is never there when it comes in.

Q. Did you ever object to any of this merchandise? A. No.

Q. Did you ever return any of it?

A. No, I never did.

Q. And you have been selling it?

A. I always did for the last ten years.

The Court: We will take a recess.

(Recess)

Mr. Coblentz: If your Honor please, I have located accurately now the Section that Mr. Beedy referred to.

The Court: Go on and develop the facts and I will give you an opportunity to argue the law.

NAT LASSER

called as a witness by the Plaintiff; sworn.

The Clerk: Will you state your name to the Court?

The Witness: Nat Lasser.

Mr. Coblentz: Q. Mr. Lasser, you manage the Carlos Wines & Liquor Store? A. I do.

Q. And you are the buyer there?

A. The buyer there.

Q. That is located at 2080 Chestnut Street?

A. Yes, sir.

Q. That is owned by your sister? A. Yes.

Q. How long have you been manager?

A. Two years, or two [26] and a half years.

(Testimony of Nat Lasser.)

Q. Have you bought liquor during that time from Coffin-Redington & Company?

A. All the time.

Q. Do you recall making purchases from them in June of last year? A. I do.

Q. Did you take merchandise in that you did not order? A. Never.

Q. Never? A. Never.

Q. Never received any merchandise that you did not order? A. No.

Q. And you are what you call the house manager? A. Yes.

Q. Do you recall having made a statement to Mr. Richardson of the Office of Price Administration in August of last year?

A. Well, the statement he made is what he wrote in the report that he made.

Q. He wrote it first and you made the statement afterwards?

A. No, he wrote the report first and then there were some things in it I did not like and he kind of changed some parts of it.

Q. So that when you signed it it was a correct statement?

A. Well, he said it was a report of the bills that I had bought.

Q. Here is an invoice dated June 30. Did you receive the items listed there? A. I did.

Q. Did you order the two cases of Marin Rum Gold?

A. Two [27] cases. That is one of the items.

(Testimony of Nat Lasser.)

Q. One of P. M. de Luxe, one-half case of Hill & Hill? A. Yes.

Q. Half a case of Fitzgerald, and half a case of J. Baret Brandy? A. Yes.

Q. You ordered that?

A. My signature is on the bill.

Q. Did you order that Rum?

A. Yes, sure.

Q. Now, on February 9 did you order a case of Olympic Brand Filets of Anchovies.

Mr. Beedy: I object to that, if Your Honor please, as being without the issues of the case. The case is confined to buying liquor.

The Court: I will allow it subject to motion to strike, and overrule the objection.

Mr. Coblentz: Q. Did you order on or about February 9 a case of Olympic Brand Filets of Anchovies? A. I did.

Q. Do you have any of those left?

A. No, I sold them all but one.

Q. Do you recall when you sold the last of them except the one?

A. The one to Mr. Richardson, and I want that back.

Q. You want that back?

A. I would like to have it back, I want to take it home and eat it.

Q. And do you recall that in your statement you said that many times you took merchandise that you did not order or want?

(Testimony of Nat Lasser.)

A. No, I don't remember making that statement. [28]

Q. I will show you this. This is your signature, is it not? A. Yes.

Q. Would you remember the statement if you looked at it? Would you read that statement over?

A. Is this the one I signed?

Q. These are your initials on it, aren't they?

A. Yes.

Q. I think you had better read it.

A. Yes. I just glanced at it hurriedly while waiting on customers.

Q. And you recall that statement?

A. I recall signing it. What statement are you referring to there?

Q. I will read it to you.

A. There are some parts that are not correct.

Q. I will ask you the question, and if I read this wrong, will you correct me. "I many times took merchandise that I did not order or want." Is that right?

A. Not from Coffin-Redington, though.

Mr. Coblentz: I move that that be stricken as not responsive to the question.

A. That refers to other houses.

The Court: Just answer the question. What do you mean by that statement?

A. There are three different firms on the statement there, and that does not refer to Coffin-Redington. Some houses I do not have a salesman call on me and they would send me merchan-

(Testimony of Nat Lasser.)

dise. If I do not want the merchandise I would send [29] them back, but that statement refers to three different houses.

Mr. Coblentz: Q. I would like to ask you this, whether that is true of the Coffin-Redington & Company?

A. No, the salesmen have called me from Coffin-Redington and I signed what I took on each order.

Mr. Coblentz: Your witness.

Cross-Examination

Mr. Beedy: Q. How long have you been doing business with the Coffin-Redington & Company?

A. About two and a half years.

Q. You never have had any complaint about their way of doing business, have you?

A. No.

Q. Who was their salesman that called on you?

A. Mr. Levy.

Q. He called one or two times a week, did he?

A. Twice a month.

Q. Twice a month? A. Yes.

Q. You discussed with him what you wanted and he told you what he had to sell, is that right?

A. He told me what he had, and I would take what I wanted.

Q. That is what you did every time?

A. Every time.

Q. And the orders were made out right there in your presence? And you signed them?

A. That is right.

Mr. Beedy: That is all. [30]

(Testimony of Nat Lasser.)

Redirect Examination

Mr. Coblantz: Q. Mr. Lasser, will you look at this invoice and see if there are crosses next to items?

A. Yes. That is my signature there okeying the merchandise.

Q. I ask that that go out. Do you recall putting that cross there? A. Which one?

A. Both of them? A. Yes, sir.

Q. Do you ever remember that you said that you put a cross next to the items you did not want? A. No.

Q. Would you look at this statement, and if I read this incorrectly, will you please say so. "The merchandise that I did not order or want are shown by a cross with my initials 'N. L.' on the invoice of the following concerns:" And the third concern named is the Coffin-Redington & Company?

A. Yes.

Mr. Beedy: May I see that?

Mr. Coblantz: Yes.

Recross Examination

Mr. Beedy: Q. Now on Invoice No. 46505, dated June 30, 1944, there is a cross against two cases of Marin Rum Gold? A. That is right.

Q. And Invoice No. 41091, dated February 11, 1944, a single item on it, a case of Olympic Brand Filets of Anchovies. There is a mark against that?

A. Yes.

Q. You have already testified that you got the

(Testimony of Nat Lasser.)

Anchovies, that you ordered them, and that you used them all up personally [31] or sold them, and that you wished to have some more of them?

A. That is right.

Q. So they were merchantable goods that you could sell and did sell, isn't that right?

A. Yes, just as I sell olives and cherries.

Q. You say you sell all of those things, you have a nice store there? A. Yes.

Q. The goods you have spoken of, anchovies, cherries, and so on, are things that naturally go with liquor, is that so?

A. People ask for them.

Q. And people who want to make mixed drinks ask for those things so that they can put them in their drinks? A. That is right.

Q. Now, these two cases of Marin Rum Gold, have you sold those?

A. Yes, I sold those, and lots of others.

Q. You have ordered a great many more since then, haven't you? A. I have.

Q. The same kind of Rum? A. Yes.

Q. Now, did you read that statement when you signed it?

A. I just glanced over it; I had customers coming in and out and Mr. Richardson wrote that out, and he said it was just a report of the bills of the different wholesale houses of what they sent you.

Q. Did you check your invoices?

A. I did.

Q. From Coffin-Redington and other firms?

(Testimony of Nat Lasser.)

A. That's right. [32]

Q. Have you ever had any complaint about the way that Coffin-Redington & Company did business with you?

A. No, never. They treated me O. K.

Q. And is it a fact that you were required to take those two cases of Marin Rum Gold?

A. No. There was a mistake in one case, that is all. I think there were three cases ordered and I got one; there was one short.

Q. Another was when the order was originally written up it was for three cases of Marin Rum Gold?

A. I think so.

Q. Didn't you telephone to Mr. Levy, the salesman, the next day at Coffin-Redington & Company and tell him that you did not want three cases, that was a mistake, all you wanted was two cases?

A. I ordered three cases at first and then reduced it.

Q. You had originally ordered three cases?

A. Yes.

Q. And you telephoned him and reduced it to two?

A. Yes.

Q. Because that was all you wanted?

A. Because I took a case from another house. I got a case from another house.

Q. And so you reduced the order from Coffin-Redington & Company from three to two cases?

A. That is right.

Q. And do you remember the occasion of the visit of Mr. Richardson, the OPA Agent, out there?

(Testimony of Nat Lasser.)

A. Yes, I think it was in the month of August.

Q. It was August? A. Yes.

Q. What did he say to you?

A. Well, he walked in and [33] he introduced himself and asked me for the bills of all three different houses, and I gave him the bills, and he went over the bills, and he saw the anchovies on the shelf, and he went up and took one off the shelf, and said do they sell you these, and I said, yes, and he said they have no right to sell you anchovies, they are not in the grocery business, and I said, well, I ordered them and I got them. So he said I will take this can and put that in the report.

Q. He put that in the report? A. Yes.

Q. Did he say they had no right to sell you anchovies?

A. Said they are not in the grocery business, they are in the drug business, and the liquor business.

Q. You know that they do sell olives and anchovies, and things like that that are used in liquors, do you?

A. Well, I bought olives and cherries, and things like that.

Q. You bought things like that from them, did you?

A. From different houses that sell liquor.

Mr. Beedy: That is all.

Mr. Coblentz: That is all.

FRANK H. RICHARDSON

called as a witness by the Plaintiff; sworn.

The Clerk: Will you state your name for the Court?

The Witness: Frank H. Richardson.

Mr. Coblentz: Q. Mr. Richardson, you are employed [34] by the San Francisco district Office of Price Administration? A. I am.

Q. In what capacity? A. Investigator.

Q. How long have you been doing that?

A. Two and a half years.

Q. Have you been investigating all different kinds of commodities?

A. Well, yes, in some cases.

Q. Have you investigated many liquor cases?

A. Quite a few.

Q. In fact, you are the only investigator for the liquor department, aren't you? A. Yes.

Q. Prior to those two and a half years what did you do, Mr. Richardson?

A. I was an auditor of the American Telephone & Telegraph Company.

Q. For how many years? A. Forty years.

Q. Do you recall visiting Mrs. Gelsie?

A. Yes.

Q. Do you remember when that was?

A. It was in the early summer of 1944.

Q. Would you tell the Court what conversation you had with her concerning liquor purchased from Coffin-Redington & Co.?

Mr. Beedy: If your Honor please, this is im-

(Testimony of Frank H. Richardson.)

peachment of the plaintiff's own witness in this case.

Mr. Coblentz: There is no question about that.

Mr. Beedy: There is no showing here that they are entitled to impeach them.

Mr. Coblentz: I think their own perjury shows that.

The Court: The objection will be overruled. Proceed. [35]

Mr. Coblentz: Q. I will show you this statement that has been referred to, to refresh your recollection. Do you recall taking that statement?

A. Yes, I do.

Q. Will you tell the court the circumstances under which that statement was written, or where you got the information for it, and whether you used this to compel them to sign?

A. This was at 6278 Mission Street, in Daly City. I met Mrs. Gelsie, who was behind the bar at that time, told her who I was, showed her my identification, and she called her husband, who, I believe, was in the back room, and I saw on the shelves that she had an awful lot of merchandise that was hard to sell, and asked her if she really ordered that merchandise, and she said no, she had not. Then I started talking to her and made up the statement and after it was finished it was read and signed, each page of it, and she made a sworn statement to the effect that she had read the statement and knew its contents, and made solemn oath that the thing was true and correct.

(Testimony of Frank H. Richardson.)

Q. Was that the entire conversation you had with her with respect to having a stock?

A. The conversation consisted of how it happened that she bought this merchandise, in order to make up the statement.

Q. After you wrote the statement out that you are referring to now, you asked her to sign it?

A. Yes.

Q. Have you testified to all the conversation that you recall? A. Yes.

Q. Did she say that any of the statements in there were not [36] true?

A. No, she did not. She read the statement and willingly signed it. They were just the facts that were given to me on paper and she signed it.

Q. Did you hear her testimony in court this morning? A. I did.

Q. Was that the story that she told you at the time of this conversation?

A. No, it was not.

Q. Will you tell the court what the conversation was at the time, as you recall?

A. During this period she was very angry at the company at the fact that she had to buy all of the other stock that could not be sold readily, and could not get any whisky, and talked very bitterly, and especially about the anchovies; she said she did not want them, did not know what they were going to do with the anchovies, that her husband and she could use maybe two or three cans. If I remember

(Testimony of Frank H. Richardson.)

rightly she said there was something like 100 cans there.

Q. In your capacity as an investigator, have you discovered whether or not anchovies have become scarce since that time?

A. I couldn't testify to that, I don't know.

Q. Now, I will show you the statement of Mr. Lasser and ask you if you recall the circumstances—that is in your handwriting, is it not?

A. Yes.

Q. Do you recall the circumstances under which you took that statement?

A. Well, I called upon Mr. Lasser, showed him my credentials, and we engaged in a general conversation in connection with whisky and items that were hard to sell. During [37] that conversation he showed me these anchovies on the shelf and a lot of merchandise he said was very slow in moving, that he had to take it all to get whisky. Then I started to write this statement and discussed it with him sentence by sentence; after it was finished he carefully read it and initialed each page of it and signed it.

Q. That is the entire conversation?

A. Yes.

Q. As you recall it?

A. As I recall it there was no conversation other than the fact that in order to get whisky he had to buy it.

Q. Did you hear his testimony this morning?

A. I did.

(Testimony of Frank H. Richardson.)

Q. Was that, as you recall, the conversation at that time and place?

A. No, it is not. He was very angry at the time that he had to buy all of this merchandise in order to get whiskey; he could not sell the merchandise, and the whisky was what he wanted.

Q. Now, I will show you the statement of Mr. Ferroni and ask you if that is in your handwriting.

A. Yes, it is.

Q. And do you recall taking that statement?

A. Yes, I took the statement.

Q. Is it correct, as Mr. Ferroni testified, that you told him you were with the government and he had to sign it?

A. No, I followed the same procedure with Mr. Ferroni as in the other cases. I showed him my identification and engaged him in conversation regarding whiskey and items he had on his shelves, [38] and he took me to his storeroom and showed me he had a lot of merchandise, which was classed as hard to sell, and some of it almost impossible to sell, and after looking at his stock I started to write this statement out and discussed it with him item by item as I put it down, and when I finished he read it and very willingly signed it; at the time he was very much angered at the fact that he had to buy a lot of stuff that he did not want.

Q. That is the conversation as you recall?

A. That is the conversation as far as I recall it.

Q. What is the date on that statement?

A. The date on this is August 7, 1944.

(Testimony of Frank H. Richardson.)

Q. Was that the date you took the statement?

A. That is the date I took the statement.

Mr. Coblenz: I would like at this time to call the Court's attention to the fact that Plaintiff's Exhibit No. 1, which is the invoice of Coffin-Redington to the Transport Cafe and shows nothing except whisky is dated August 8th, the day after the statement.

Q. Mr. Richardson, did you interview Mrs. Parker? A. No, I did not.

Q. Do you know who did?

A. I think it was Investigator Nelson.

Q. Is he with your office any more?

A. He is not with our office.

Mr. Coblenz: That is all. [39]

Cross-Examination

Mr. Beedy: Q. Mr. Richardson, you say that Mrs. Gelsi said that she got a lot of these things that she did not order. Did you say that?

A. Yes, I said that.

Q. Did she tell you at the time that she never ordered anything that it was her husband who did the ordering?

A. Well, she told me both of them did the ordering; she said they talked the thing over and got their heads together and did the ordering.

Q. Mr. Guito speaks Italian—he is the salesman who deals directly with Mr. Gelsi?

A. That may be, I don't know.

(Testimony of Frank H. Richardson.)

Q. Did she tell you she had nothing to do with the ordering, that her husband did it all?

A. No, she said part of the time she did and part of the time her husband did.

Q. Do you know that the license stands in her name, she is a citizen of the United States?

A. That may be, I don't know.

Q. You don't know that?

A. No, I took her own word, she said she was the owner.

Q. The license stands in her name, but didn't she tell you that her husband did all the ordering, and that she never put in an order of any kind?

A. No. In my conversation with her I understood that the both of them did the ordering, because he does not speak very good English, and she did the ordering.

Q. She said that?

A. Yes, if I remember correctly, when I was taking this statement, I said I wanted to talk to the people who owned it and ordered it. [40]

Q. What time did you go there, Mr. Richardson?

A. What time of the day?

Q. Yes.

A. I don't recall what time it was.

Q. Was it around in the morning or afternoon?

A. It was sometime between ten o'clock in the morning and three o'clock in the afternoon. What time it was I could not tell you.

Q. Did you see her husband?

(Testimony of Frank H. Richardson.)

A. Yes, I saw her husband and talked to both of them.

Q. Did she tell you about the size of the cans of anchovies? A. Yes, I saw them.

Q. They were 2-ounce cans?

A. They were small cans.

Q. Going to Mr. Lasser's statement, you knew he was buying from several firms, didn't you? He showed you invoices to that effect?

A. Yes, I saw invoices from several firms.

Q. What did you say about Coffin-Redington Co. to him? A. Nothing that I recall.

Q. You told him they had not right to sell anchovies to him, didn't you?

A. I didn't make that statement.

Q. You heard him say that?

A. I heard him say it, but I never made that statement. I did not make a statement of what they dealt in.

Q. You didn't know that?

A. No, I didn't know it.

Q. You saw the anchovies on the shelf, did you?

A. He mentioned the anchovies to me first, and showed them to me, and showed a can, a really large can, I think they sold for a couple of dollars apiece. [41]

Q. A 12-ounce can?

A. Yes. He was wondering what he was going to do with them, he never could sell them at that price.

(Testimony of Frank H. Richardson.)

Q. Is it a fact that all of these anchovies are imported goods, or don't you know that?

A. I don't know.

Q. Imported from Portugal?

A. I think it said on this can they were imported from Portugal.

Q. Yes, and they are very hard to get, do you know that? A. No, I don't.

Q. You don't know and you didn't inquire about that?

A. I don't buy anchovies, I don't know.

Q. Take Mr. Ferroni, who runs a business down there in the Italian neighborhood—you know that, don't you?

A. No, I don't know whether it is an Italian neighborhood.

Q. Anyway, he has a great many customers who are Italian people?

A. There was hardly anyone in there when I was there.

Q. You went in during the day?

A. Yes.

Q. I presume they were there in the evening?

A. That is right.

Q. Did he tell you that he used all of these different liquors other than whisky for making coffee royals?

A. No, he did not. Coffee royals was never mentioned.

Q. It was never mentioned to you?

A. To me, no.

(Testimony of Frank H. Richardson.)

Q. He didn't say then what outlet he had for these other liquors that he was buying?

A. No, he did not; he was very angry at the fact that he was loaded up with a lot of Tequila, and rum and stuff like that. [42]

Q. Did he tell you that he bought this Anis Gorilla because he could use it in his coffee royals?

A. No, he didn't. He told me he had to take that stuff—he was not forced to take it, I believe, but he had to really take it in order to get the whisky.

Q. Now, you say he told you that he was not forced to take it?

A. In those words—could I see my statement that I took from him? It is pretty hard to recall, and I would like to see. He said he had to take merchandise he did not want in order to get whisky.

Q. Mr. Ferroni did not read that statement, did he?

A. Yes, he did—I read it to him.

Q. He said he did not. Did you read it to him?

A. He read it and signed it.

Q. Do you know whether he can read?

A. I know that he had it in his hand, I suppose he was reading it. He did not read it aloud, but I did.

Q. Did he tell you that in order to stay in the liquor business he had to get items other than whisky, to keep his customers he had to get something as a substitute for whisky or else he could not stay in business? Did he tell you that?

(Testimony of Frank H. Richardson.)

A. No, I do not recall his making a statement like that.

Q. That was a fact, was it not, and you knew it?

A. That I don't know.

Q. You knew whisky was scarce in 1942?

A. I don't know whether [43] he could keep in business or not; I knew whisky was scarce.

Q. And if he could not get whisky and sell it he had to get some other alcoholic beverage to take its place?

A. That might be, I don't know.

Q. You don't know that. Didn't he tell you that?

A. No, he did not.

Q. Weren't you the one that pointed out to him that a great many of the articles that you saw on the shelves were slow movers?

A. It was not necessary for me to point them out, he knew it.

Q. But you did——

A. I might have mentioned the fact that certain merchandise was slow moving, something like that.

Q. Didn't he say to you that he had plenty of space and had an outlet for it all?

A. Oh, no, he was angry at the fact that he had so much of this merchandise that was hard to sell and he could not get whisky.

Q. Don't you think he was angry at you rather than at the merchandise?

A. I don't think so.

Q. Didn't he at first refuse to sign a statement?

A. No, he did not.

(Testimony of Frank H. Richardson.)

Q. Didn't he say "No, I won't sign," and you said this is a statement that you would like to have him sign, it won't hurt anybody?

A. No, that is not a fact. He read the statement and signed it.

Q. Didn't you say, "Won't you sign a complaint against Coffin- [44] Redington Company, and he said, "No, I won't?"

A. No. I would not make that kind of a statement. We do not issue complaints that way.

Q. Didn't you explain that it was not a complaint, that it was just a statement? Do you recall that?

A. No, I don't recall that at all. The question of a complaint never came into it, as far as I know.

Q. Now, isn't it a fact that after he first refused to sign what you would call a complaint, you said, "This is only a statement," and when he refused did you show him your badge and say, "You had better sign that?"

A. I have no badge.

Q. You had no badge at that time?

A. I have no badge at all. I never made that statement to him.

Mr. Beedy: That is all.

The Court: We will take a recess now until two o'clock.

(A recess was taken until two o'clock p.m.)

Afternoon Session

Mr. Beedy: If your Honor please, I was going to call Mr. Richardson back, but I have talked to Mr. Coblentz, and I think we can perhaps stipulate to the facts.

Mr. Coblentz, will you stipulate that on June 20, 1944, the War Production Board issued an order permitting the distillers to make whisky for the month of August amounting to fifty million gallons?

Mr. Coblentz: I don't know the fact as to the amount, nor even as to which agency it was, but it was a matter of general knowledge, and I will stipulate that at the time that is involved here whisky was very scarce, and that actually the government permitted the whisky distilleries to make more whisky, and the amount available thereafter was greater than before. Is that satisfactory?

Mr. Beedy: My point, Mr. Coblentz, is that the order was issued in June and the effect of allowing the distillers to make whisky in the month of August to the amount of fifty million gallons resulted in the distilleries releasing a lot of whisky that they then had on hand.

Mr. Coblentz: I don't know what the facts are, Mr. Beedy.

Mr. Beedy: Well, the fact is, and it was common knowledge, and you knew that in the OPA, that the War Production Board did permit the manufacture of fifty million gallons of whisky [46] by the distillers, and that eased the difficulty of getting whisky that had prevailed. I am not sure

that Mr. Richardson has knowledge of that, but I think your Honor would take judicial notice of the orders of the War Production Board and agencies of that kind.

The Court: Proceed.

Mr. Coblentz: If your Honor please, in answer to the interrogatories served and filed we listed a number of persons to whom these sales were made. We called all of them now to the witness stand except Giovanni Mori, who is ill, and I spoke to his doctor over the phone, a Dr. Kennedy, who is attending him, and it will not be possible for us to produce him as a witness, and with that explanation the plaintiff will rest.

Mr. Beedy: Do you rest?

Mr. Coblentz: Yes.

Mr. Beedy: The defendant will move for a dismissal of the case upon the ground that upon the facts and the law plaintiff has shown no right to relief in this case. Regulation 445 prohibits the selling of alcoholic beverages for a price higher than the ceiling applicable to such sales, and the regulation further states that this price ceiling shall not be evaded either directly or indirectly in any manner. That is the section that Mr. Coblentz called your attention to this morning. In other words, the essence of the complaint here is that the [47] defendant violated the ceiling price by overcharging for certain commodities. Plaintiff has not shown that, he has not made his case. Now, the plaintiff here contends that the defendant sold persons unwanted items or certain undesired items, and that

this amounted to a sale of desired items at a price which the purchaser paid that resulted in a violation of the ceiling price.

It is our contention here that all items were sold at the ceiling price placed upon them by the Office of Price Administration. Your Honor will recall that was stipulated to this morning, that all of the items had a ceiling and that all had been sold within the ceiling price, and where several of those items are sold during the same transaction and none of them over the ceiling price there could not possibly be a violation of the price ceiling.

Of course, it is conceivable where one item sold has an established ceiling and one of the items does not, the total price received for both items is higher than the ceiling price. That is what did occur in that case decided by the District Court in Connecticut. There the bananas had a ceiling price and the tomatoes did not have a ceiling price, and there the Price Administrator established the fact that the seller required, when he sold bananas that he take a certain amount of tomatoes, and it was held to be a violation; the tomatoes were not regulated. But we have not that case here. We [48] have a case here where every item sold at the ceiling price placed on it by the OPA and no sale was made above that ceiling price. So we have a situation where every item was sold at a price fixed by the Office of Price Administration. There are no facts in this case to show that any purchaser was compelled to or forced to take any item that he did not want.

This is a suit in equity for an injunction, and your Honor is being asked to issue an injunction to prevent this firm from selling whisky upon the condition that the purchasers would take certain items like Roman gin and other things, and there is no showing of any kind that defendant ever did that, and there is no reason why an injunction should issue to prevent them from doing something they never have done and did not intend to do.

Mr. Coblentz: If your Honor please, I would like to read that section that we referred to this morning. "The provisions of this regulation shall not be evaded, whether by direct or indirect methods, in connection with an offer, solicitation, agreement, sale, delivery, purchase or receipt of or relating to any commodity, or service covered by this regulation, alone or in conjunction with any other commodity or service, or by way of finder's fees, brokerage, commission, service, transportation or other charge or discount, premium or other privilege; by tying agreement, combination sales or trade understanding; by any change in style or manner of packing; [49] by requiring the buyer to purchase packaged distilled spirits or wine on a per-drink basis; or in any other way. The specific enumeration of acts constituting evasion is illustrative but not exclusive."

Now, there is certainly testimony here—this is a motion to dismiss, and I understand that the Court will take as true all evidence in plaintiff's favor and disregard the other—there is certainly testimony in the record of a tying agreement and combination

sale, and that constitutes an evasion of this regulation by the sale of whisky at a price above its ceiling, where other items were delivered at the same time which were not desired by the purchaser.

The Court: The motion will be denied at this time.

SHERWOOD COFFIN,

called as a witness on behalf of defendant; sworn.

The Clerk: Will you state your name to the Court, please?

A. Sherwood Coffin.

Mr. Beedy: Mr. Coffin, where do you reside? Where do you live?

A. In Marin County, San Rafael.

Q. Are you an officer of Coffin-Redington & Co.?

A. Vice-President and General Manager.

Q. And that company is a corporation, is it not?

A. Yes.

Q. And has been since 1921? A. Correct.

Q. And it and its predecessors have been in business in San [50] Francisco since 1849, have they not? A. Yes.

Q. Now, what is the nature of your business, Mr. Coffin?

A. We are wholesale druggists and wholesale liquor dealers.

Q. What were your gross sales during the year 1944?

A. Roughly, nine and a half million dollars.

(Testimony of Sherwood Coffin.)

Q. And during 1943 do you recall what they were?

A. Something over eight million dollars, nearly eight and a half million.

Q. You do, as a part of the business of that concern, a great deal of business with different government agencies, do you not? A. We do.

Q. And in the internal administration of the business, have you it divided into two divisions?

A. We have a drug division and a liquor division, with a liquor division manager.

Q. Who is the manager of your liquor division?

A. Edwin Schloss.

Q. Who is manager of your drug division?

A. Well, I am the general manager, and in the drug division the details would be up to me, and in the liquor division they would be up to Mr. Schloss.

Q. Mr. Haaf is a director of the company, and vice-president, and has charge of liquor sales?

A. General sales manager of liquor.

Q. The liquor division of the business during 1943 was what percentage of the whole business, Mr. Coffin?

A. Something less than 20 per cent.

Q. And in 1944 what was it?

A. Slightly above 20 per cent. [51]

Q. What is the policy of the company in respect to the management and sale and matter of that kind?

A. Our endeavor is to observe all laws govern-

(Testimony of Sherwood Coffin.)

ing our business. We have narcotics and liquor and various other articles that have special laws concerning them, and we endeavor to observe all of those laws strictly. We endeavor to serve our customers fairly and see that everybody has a square deal, so to speak.

Q. And in that respect you have cooperated, have you, with all of those government divisions?

A. We have endeavored to.

Q. Including the OPA?

A. Including the OPA.

Q. And they have been down and investigated these various sales, have they not?

A. I believe they did investigate them.

Q. You afforded them all the facilities that they asked for, did you not? A. We did.

Q. You turned over your invoices to them so that they could select any ones they wanted to, is that right?

A. We did, that is our policy. We have done the same thing with the Pure Food & Drug people, and various other special agencies.

Mr. Beedy: That is all.

Cross-Examination

Mr. Coblentz: When you say that your liquor constitutes approximately 20 per cent of the business, what is that by volume?

A. By volume?

Q. Do you keep the profits on sales separately?

A. Yes.

(Testimony of Sherwood Coffin.)

Q. What is the average gross profit on your drug sales? [52] A. Around 16 per cent.

Q. And on liquor sales?

A. A little less than that, I think it is 13 or 14 per cent.

Q. You say your policy is to show the records to the government agencies; with respect to the OPA, you are aware that is also a requirement of the law? A. We endeavor to obey the law.

Mr. Coblentz: That is all.

Mr. Beedy: That is all, Mr. Coffin.

EDWIN SCHLOSS,

called as a witness by defendant; sworn.

The Clerk: Will you state your name to the Court, please?

A. Edwin Schloss.

Mr. Beedy: Where do you live, Mr. Schloss?

A. Atherton.

Q. What is your business?

A. I am manager of the liquor division of Coffin-Redington & Co.

Q. How long have you been such?

A. Pretty close to three years.

Q. What was your business prior to that?

A. I was manager of another distributor here for several years.

Q. Have you been in the liquor business since the repeal of prohibition?

(Testimony of Edwin Schloss.)

A. At the time of repeal I was appointed Pacific Coast Manager of the Continental Distillery, and held that position for seven years. [53]

Q. What distilleries does Coffin-Redington & Co. represent?

A. National Distilleries, Calwa, Hiram Walker, Continental and Stitzel-Weller and Medley.

Q. You have bulk whisky of your own in Kentucky?

A. In two distilleries we have bulk whisky.

Q. In which ones?

A. Stitzel-Weller and Medley.

Q. Where are those situated in Kentucky?

A. The Stitzel-Weller is at Louisville, just outside of the suburbs, and Medley is in Owensboro, Kentucky.

Q. When did whisky first begin to get scarce, Mr. Schloss?

A. In the latter part of 1942.

Q. What did you do to meet the situation of shortage?

A. The demand became tremendous by the accounts that had been doing business with us, so we made a breakdown of their purchases for the first eight months of 1942 to find out what value each account had as a customer, and therefore could trace the amount of whisky that we could allot to that account; I speak of whisky and other spirits.

Q. How many customers did you have?

A. You mean at that time?

Q. Yes.

A. In 1942 there were about 700 customers in

(Testimony of Edwin Schloss.)

straight liquor, I mean by that package goods, stores, and places where liquor alone was sold.

Q. Then you had other customers who were druggists, also? A. Yes, we had druggists.

Q. How many of those were there?

A. Well, there were [54] approximately, I would say, something over 1000 drug accounts that had been doing and still are doing business with Coffin-Redington & Co.

Q. These allotments that you speak of are applicable to all of your customers, whether druggists, or not, aren't they?

A. Well, it was handled in a manner that as far as liquor customers were concerned we made a breakdown of what they were entitled to, and so informed the salesmen that called on them, and the drug customers were handled by the Drug Department, which was familiar with them; some of those customers have been on the books for thirty, or forty, or fifty years, and knew what they were entitled to on the basis of their value as a customer.

Q. Did you instruct your salesmen in respect to these allocations?

A. They were all advised as to the previous purchases of the account that they called on in dollars and cents. They were given the information of the purchasers in the first eight months of 1942 to be used as a guide, because of the pressure on the salesmen, many of them were old friends, many of our men having been calling on them for seven or eight or nine years, and they endeavored to get as

(Testimony of Edwin Schloss.)

much as they possibly could from our men, and we wanted to have the yearly sales as a unit of measurement, so we gave them the information for the eight months of 1942, which was considered normal times.

Q. Did they communicate that to the various customers when they called on them?

A. Yes. [55]

Q. You were informed of that?

A. Yes. They were informed as to what each customer could expect from us on the basis of previous purchases.

Q. What competition does your company have—how many wholesale distributors are there in San Francisco?

A. Well, there are about thirty distributors in San Francisco, and we have to compete with them because they have approximately the same line as we have.

Q. You mean thirty in San Francisco, and thirty out in the Bay Area in addition to those?

A. No, I mean that there are about thirty in the immediate Bay Area that we would consider competitive.

Q. Does your company sell olives, anchovies, cherries, and thing of that kind?

A. We always have sold olives and cherries and things of that nature; we have to do that in the liquor business, that is closely connected with the liquor business. As a matter of fact, the ideal situation would be to set up a hotel and club supplies department, where these various delicacies

(Testimony of Edwin Schloss.)

could be obtained from us, and many of the imports we carry would also fall in that category.

Q. Are the supplies of delicacies such as anchovies and pate de foie gras restricted?

A. They are very restricted, they are difficult to get. As a matter of fact, there were many times we were out of cherries and various sizes of olives, and also that is true of anchovies and other articles which [56] could not be obtained.

Q. Anchovies have been the subject of some questioning. Do you know whether these were imported?

A. They were imported from Portugal in pure olive oil. They are considered one of the finest types of delicacies, and they are used quite generally in connection with liquors.

Q. During the eight months from February to July, 1944, the complaint charges certain of your customers were compelled to buy brandy, rum, and other things in order to buy whisky. Is that true?

A. That has never been the policy to force any merchandise on anybody at any time.

Q. As a matter of fact, during this eight-month period, and generally, do retailers return to you items such as gin, rum, tequila, and so on when they do not want it?

A. Yes, we have occasions where we have made a record of where they have made returns of that kind and we gave credit for it. There were various times they informed us that they did not want the merchandise and we cheerfully and willingly have

(Testimony of Edwin Schloss.)

taken it back. Among those items you made mention of there you spoke of rum. In that period covered there were people that for various reasons did not want rum, and we have set up a credit for 94 1/3 cases of rum which we took back; a copy of those credits is here. We have established that as a policy, and anybody at any time that did not want, for various reasons, or any reasons sufficient to us, they could return it to us at will, and those credits were established for those various accounts. [57]

Q. Did your customers know that?

A. They always knew that it was our policy.

Mr. Coblentz: If your Honor please, we ask that the conclusion of the witness as to whether his customers knew something or not, be stricken out.

The Court: Develop the facts.

Mr. Beedy: These so-called unwanted items that I spoke of, like rum, Bocard brandy, etc., were those items restricted, too?

A. Everything we had there you are covering in the invoices was allotted and allocated to the salesmen, and they always had to be allotted, and I allot that merchandise to their accounts; it was never an open item because of our inability to replace them, and we had to restrict it for that reason.

Q. You used the words "restricted items" and "open items." What do you mean by restricted? Are restricted items those items that you were not able to keep fully supplied with?

A. Yes. Subsequently what we did there as merchandise became available after the holiday we had

(Testimony of Edwin Schloss.)

in August, there were certain things that could be released that we could put on as open items, that could be sold at the wishes and desires of our customers. Others had to be still restricted, because our suppliers could not supply us with unlimited quantities of certain things.

Q. Take rum, for instance, that has been spoken of here, and is [58] on a number of these invoices, was rum hard to get, or easy to get?

A. Rum was very limited, and it was difficult to secure the quantities of rum that our customers wanted, and we were unable to sell to them to fill their needs, it was definitely restricted. Rum came into this country and it had to be used as a substitute because of the limited amount of other spirits that were available.

Q. Bocardi rum which was spoken of, isn't that a high quality of rum?

A. That is the cream of rum, the Bocardi people are famous and they do a business—it is not only national, but it is international, all over the world; a very limited supply of Bocardi rum has come into this or any other market.

Q. Was that a restricted item, too?

A. It still is.

Q. Is that true, or what have you to say about Baret brandy? Is that a brandy that is of good quality?

A. It is an excellent quality. Baret brandy is made by, that is, it is bottled by the Many Blanc Company, of Chicago. As a matter of fact, the lim-

(Testimony of Edwin Schloss.)

ited quantity that we had of Baret brandy, which was a small quantity, was our own brandy made in California at the Alta Winery, in Dinuba, and we made a deal, transaction, whereby we sold at OPA prices our bulk brandy to the Many Blanc Company, and then in turn sold 1000 cases under their line of Baret brandy, it was our own brandy, and we were very fortunate in getting it.

Q. Is that a good quality of brandy?

A. Excellent. [59]

Q. Now, Mr. Schloss, did you give any directions to your salesmen in reference to the sale of whisky?

Mr. Coblentz: If your Honor please, I am going to object to that as to whether or not he gave instructions to them, as a conclusion. If he wants to ask what statements he made to the salesmen that is perfectly satisfactory.

The Court: He may answer.

Mr. Beedy: Did you give instructions to your salesmen—just answer that “Yes” or “No.”

A. Yes.

Q. Were those in writing, or verbal?

A. There were some in writing at times and others were verbal, regarding the policy of the company at all times.

Q. Were those restricted to the salesmen?

A. They were restricted to the salesmen.

Q. Have you copies of any of those?

A. I have not copies with me here. We have a record of instructions to salesmen as to their duties.

Q. Do any of those instructions relate to these so-called tie-in agreements?

(Testimony of Edwin Schloss.)

A. The instructions definitely were to the effect that we had no such thing as tie-in sales. It has always been the policy of Coffin-Redington & Co. to offer our merchandise on a legitimate basis, in keeping with all regulations, which, of course, includes the OPA.

Q. During the period you have spoken of, Mr. Schloss, when was it that the sale of whisky began to ease up so that you could [60] get more of it?

A. Well, in anticipation of the August, 1944, so-called liquor holiday we anticipated and we began to get a little larger supplies during June and July, and from August on until the beginning of the year.

Q. Was it after those dates that you were able to give your customers more whisky than you had before?

A. Yes.

Q. And you did, did you not?

A. Yes.

Q. Isn't it a fact that many of your customers, who prior to that time had purchased some whisky and rum and gin and tequila, and other items, began to purchase whisky alone?

A. That is correct, here. We have records, here, if the court is interested in them, in which there are many orders that are nothing but whisky and represent no other items of any kind. These are all orders, straight whisky orders, over the period of time that you are seeking information on.

Q. That is, you mean during July and August of 1944?

A. February to July.

Q. Now, Mr. Schloss, is it not a fact that the retail liquor dealer was faced with the problem that he

(Testimony of Edwin Schloss.)

had to find substitutes for whisky if he intended to stay in the liquor business?

A. Well, it was definitely established that it was our duty to keep our customers in the business, and we made purchases of merchandise which proved itself to be sound merchandise, and sold it to our customers, and on the straight whiskey basis the customers in many instances would have gone out of business, they [61] would have to go out of business, there was an insufficient quantity of whisky from any source to keep them in business so that they could make a living.

Q. Do you know what the company liquor sales were from February to July, 1944?

A. Approximately a million dollars gross sales.

Mr. Beedy: That is all.

Cross Examination

Mr. Coblentz: Mr. Schloss, what were your duties as manager of the liquor division of Coffin-Redington & Co.?

A. Well, my duties were of a varied nature, to purchase, supervising, policy-making and planning.

Q. Did you supervise all departments?

A. All departments of the liquor division?

Q. Yes. A. Yes.

Q. You were in effect the purchasing manager of such items as you purchased, and the sales manager?

A. That is correct.

Q. Do you recall just what you told your salesmen with respect to how they were to dispose of the items that Mr. Beedy referred to as the unwanted items?

(Testimony of Edwin Schloss.)

Mr. Beedy: I called them the so-called unwanted items.

A. I don't think that there were any unwanted items, because the proof is that they have been sold, and we now find that they are hard to replace, many of the things that we had at that time which are your so-called unwanted items that you have found some fault with.

Mr. Coblentz: Q. Mr. Schloss, what did you mean when you [62] answered Mr. Beedy's question to the effect that you gave the salesmen a certain allotment of those so-called unwanted items, and instructed them to allot them among your customers?

A. They were on an allotment basis; they were not items that we could quickly and in unlimited quantity replace, so their sales were restricted. I think the reason this name "unwanted items" came in here is because of the fact it has been conveyed here that they were not wanted. They were wanted items at all times, and still are.

Q. Mr. Schloss, you referred to a Baret brandy. There are several kinds of brandy, aren't there?

A. There are many kinds of brandy.

Q. They are made from grapes, and originally the word was brandy wine?

A. Yes, it is a distillation of grapes.

Q. A distillation of grapes?

A. Basically it originates in the grapes.

Q. As I understand it, this Baret brandy, bottled in Chicago, I think you said, was considered to be a very fine brandy?

(Testimony of Edwin Schloss.)

A. That is correct.

Q. And so fine that you had their label, with their permission, placed upon some brandy that you had distilled down in Dinuba?

A. That is correct.

Q. So that the public thought they were getting this very fine Baret brandy when, as a matter of fact, they were getting Dinuba brandy?

A. That is only the geographical name, it was [63] Alta Winery Brand. We had a bulk brandy that was five years old and considered the best quality of brandy that was produced in the State of California, it was superior in quality, and the only reason that we had any thought of putting up the brandy on that basis was because of the popularity of the Baret Brandy in this community. It sold very readily, and still does.

Q. As a matter of fact, Mr. Schloss, the California wines and California brandies are the best in the country, and used to be shipped into France and shipped back and sold as French wines and brandies, didn't they?

A. A great deal of our California brandy used to be shipped to France and there it was blended along with Cognac, and it came back as Cognac brandy, and we know it as Martell and various other brands, and much of that came from California, or from Africa.

Q. And Dinuba is right down in the heart of the grape district, is it not? A. That is correct.

Q. A little south and east of Fresno?

(Testimony of Edwin Schloss.)

A. Yes.

Q. Do you know of any grapes grown in Illinois?

A. There are some grapes, but it is not a grape-producing community. I would not say that that would have anything to do with where it was branded. The Many Blanc Company advertised in *Esquire* and *Life* and other magazines, and it has had an excellent reputation at all times.

Q. To get back to the so-called unwanted items, is it your testimony that there is no such thing, and that that there never was? [64]

A. As far as we are concerned there were no unwanted items.

Mr. Coblentz: That is all.

Mr. Beedy: That is all. I will call Mr. Levy.

MORRIS LEVY,

called as a witness by the defendant, sworn.

The Clerk: Will you state your name to the Court?

A. Morris Levy.

Q. Where do you live, Mr. Levy?

A. 3005 Clay Street, San Francisco.

Q. Where are you employed?

A. Coffin-Redington & Co.

Q. How long have you been employed by Coffin-Redington & Co.?

A. A little better than two years.

Q. As a salesman? A. As a salesman.

Q. What was your business prior to that?

(Testimony of Morris Levy.)

A. Previous to that I was in the radio business for twenty years on Market near Sixth.

Q. Did you call on Mr. Lasser, Mr. Levy?

A. Yes, I called on him regularly, twice a month.

Q. And Mr. Ferroni, also?

A. Mr. Ferroni, also.

Q. Those are two customers who have their place of business down in the Marina district?

A. That is right.

Q. How often did you say you called on them?

A. Twice a month.

Q. Each one? A. Each one of them.

Q. Now, did you get your allotments from Mr. Schloss as to what you could sell the customers that you called on? A. Yes. [65]

Q. And you called on those customers and told them what you had to sell them, is that so?

A. That is a salesman's job. I walked into their place of business and offered them my merchandise for sale.

Q. Take Mr. Ferroni, where is he located?

A. On the corner of Union and Buchanan, I think.

Q. He has the Transport Cafe?

A. Transport Cafe, now called the Transport Club.

Q. He is an Italian?

A. He is an Italian.

Q. By nationality? A. Yes.

Q. What was his business out there?

A. He had primarily a bar, he served a few sandwiches, and he has got a card room in the back of the

(Testimony of Morris Levy.)

bar and serves all kinds of drinks, but his main business is coffee royals; he does a tremendous business in coffee royals.

Q. Now, in June and thereabouts, Mr. Levy, you were calling on Mr. Ferroni and selling him goods of various kinds, weren't you?

A. I called on him, as I said before, twice a month. and sometimes even more, sometimes three times a month.

Q. What was your method of making out the order, there?

A. Well, I suggested various different articles that I had for sale, a list of whatever we had that particular month, whisky, rum, brandy, tequila, vodka, and anything that we had for sale, and asked him what he could use. He said, "Well, I could use some of this, I could use some of this, I could [66] use some of this," and it is the salesman's business to suggest to them, "I have this, and this," and then if he says "Okay, I will take some of that," I take the quantity and put it down on the order, and then when the order is completed I say, "Now you are sure you have not forgotten anything?" And he says, "No, that is about all," and I say, "Okay, here is your order; sign it." And the signature appears on the order.

Q. On each order? A. Each order.

Q. Now, whisky was scarce around June, or at least prior to June, May, June, July, February and March?

A. Very much so.

(Testimony of Morris Levy.)

Q. Did he purchase articles other than whisky as shown on these various invoices?

A. He surely did, he bought some of the merchandise that I had and bought it very willingly, because he dealt very largely in coffee royals, he bought rum, and brandy, tequila, particularly for the foreign element.

Q. Did you at any time, Mr. Levy, ever require Mr. Ferroni to purchase any articles in order to get whisky?

A. I never have. Having been in the retail business myself, for better than 25 years, I always made it a policy to treat my customers the same as I would like to be treated, myself, and not force them at any time, to take anything. I told them what it was, if he was not quite familiar with it, and naturally he was only too glad to get it.

Q. Did he sell these articles, do you know?

A. Every day—he uses them every day. [67]

Q. And he repeated the orders from time to time, did he not? A. Very much so.

Q. Of brandy, tequila, and other articles?

A. Yes. In fact, once he mentioned Anis Gorilla, he wanted that, brandy and anisette, because he had been looking for it for some time and could not get it for a long time, he did not have any, and the Italian people like it and use it in some quantities.

Q. Now, coming to Mr. Lasser, where is his place of business?

A. On Chestnut Street, the 2000 block, I think.

(Testimony of Morris Levy.)

Q. He has a delicatessen store and bar there, has he?

A. No, he has what is called a packaged good store, he has a very beautiful store, I would call it one of the outstanding stores on Chestnut Street in the Marina District. He sells all kinds of wine, all kinds of liqueurs, cherries, olives, cigars, cigarettes, and all of the soft drinks, anything that pertains to that business.

Q. Did you sell him whisky, and rum, and brandy, and gin, and tequila?

A. Yes, I sold him everything I had to offer.

Q. All of those things? A. Yes.

Q. Did you ever at any time make a sale of any of those articles with the condition attached to it that he had to take them in order to get whisky?

A. That was not our policy, it was not the policy of the house, and there is no reason for a salesman to force anything on a particular customer if he expects to go back to him. [68]

Mr. Coblentz: I ask that that go out as not responsive to the question. The question was whether or not he said that to Mr. Lasser.

The Court: It may go out.

Mr. Beedy: Will you read the question?

(Question read by the reporter.)

A. No, at no time.

Q. Did Mr. Lasser at any time tell you that he did not want or could not use or found that he was supplied with—

A. There was one particular instance where Mr.

(Testimony of Morris Levy.)

Lasser placed an order with me for three cases of Marin Rum, he was practically out of it, and he ordered three cases. The following morning he phoned to the office that due to the fact that another house sent him a case of it and wanted us to cut it to two, so I did, and he appreciated it very much.

Q. You would do that?

A. I would do that for anybody, I would have cancelled it, because we could have sold it a hundred times over.

Mr. Beedy: That is all.

Cross Examination

Mr. Coblentz: Q. Mr. Levy, as I understand it you have been with Coffin-Redington for the past two years? A. A little better.

Q. Was Mr. Lasser your customer all that time?

A. Yes.

Q. Do you know whether anyone else from your firm called on [69] him?

A. No one else called on him.

Q. So that his only contact with Coffin-Redington Company was with you? A. Through me.

Q. Did you have a quarrel with him at any time. Did you ever do anything which you know now or then knew that displeased him?

A. Not to my knowledge.

Q. Or anything that the firm ever did?

A. No.

Q. If you were told, as was introduced in evidence this morning, that both of these gentlemen com-

(Testimony of Morris Levy.)

plained to Mr. Richardson, of the Office of Price Administration, that they were compelled, each of them was compelled to purchase other items that they did not wish in order to get whisky from your firm, and you have testified that you did not say that to them, how do you account for their having made that statement to Mr. Richardson?

A. I do not see how they could have made it.

Mr. Coblentz: That is all.

Mr. Beedy: That is all. I will call Mr. Guito.

PETER GUITO,

called as a witness by the defendant, sworn.

The Clerk: Will you state your name to the Court, please?

A. Peter Guito.

Mr. Beedy: Q. You are a salesman of Coffin-Redington & Co.?

A. I am.

Q. And for how long have you been such?

A. A little over nine years. [70]

Q. In the liquor department?

A. In the liquor division, yes.

Q. Did you call at Gelsi's place out on Mission street regularly?

A. Yes, I did.

Q. How often did you go there?

A. Oh, once a week, once in a while I would skip a week.

Q. Is the place in Mrs. Gelsi's name?

A. That is correct.

Q. What is her husband's name?

(Testimony of Peter Guito.)

A. Enrico—it begins with an “E.”

Q. You know him, do you not?

A. Very well.

Q. Now, how long have you known them?

A. Ever since I have been calling there.

Q. How long has that been?

A. Well, practically for nine years.

Q. Has he been there during that time, nine years?

A. Yes.

Q. And you have sold him all that time liquors such as are carried by the firm of Coffin-Redington & Co.?

A. I have.

Q. Who was the person with whom you discussed orders—who was the person who gave you the orders out there?

A. Mr. Gelsi.

Q. You could speak to him in his own language?

A. I could.

Q. Is he the manager of the place?

A. Yes, he is.

Q. Now, what time of day did you usually call there?

A. Well, I generally called there about twelve, if you do not call there about then you do not catch them.

Q. He is not there?

A. If you got there a few minutes after one you do not catch him, unless you get there after four o'clock. [71]

Q. What was your method of taking orders from him?

(Testimony of Peter Guito.)

A. Well, I would go in and show him what I had for sale, and he would buy it.

Q. Ask him what he wanted, is that it?

A. I would tell him what I had to sell, I offered him whatever I had and he would buy what he wanted. Sometimes he would want something we did not have and I would make a note of it, and when we got it I would tell him. I would tell him, we have so and so, if he wanted it.

Q. Who wrote the order, did you?

A. I wrote the order.

Q. Did he sign it?

A. He always signed it.

Q. Did Mrs. Gelsi sign any orders?

A. No.

Q. You generally met Mr. Gelsi in the room that was spoken of in back of the bar, didn't you?

A. He would be in the back, so I would go back there and we would do our business there; sometimes when he gave his wife checks to deposit he would be standing up in front.

Q. The bank is right across the street?

A. Right across the street.

Q. It is alleged in the complaint in this case that Bocardi rum was an unwanted item there. Isn't it a fact that Mr. Gelsi had been trying to get that for months before you sold it to him?

A. For months, and I had a note in my book to fill his order on that just as soon as we got it in.

Q. According to the invoice you sold him four or five cases [72] Bocardi rum amber gold and Bo-

(Testimony of Peter Guito.)

cardi rum silver white. That is what he wanted to get?

A. Yes, he asked for that.

Q. What did you give him?

A. At first I told him we could only give him a case, but I told him we might pick some up elsewhere, and as soon as it came in I got in touch with him again and told him I would give him two cases instead of five that he wanted, and he was glad to get them.

Q. Now, did Mr. Schloss, the manager of the liquor division tell you and the other salesmen at sales meetings what the policy of the house was in relation to the so-called tie-ins?

A. He did.

Q. Did you ever sell to Mr. Gelsi or Mrs. Gelsi whisky on condition that they would purchase rum, tequila, gin, or any of the other items?

A. No.

Q. As a matter of fact, when whisky was easy to get you did sell Mr. Gelsi on occasions just whisky alone, isn't that true?

A. I did, if that is what he wanted, and if he wanted anything else that is what he got.

Mr. Beedy: That is all.

Cross Examination

Mr. Coblentz: Q. You were in court this morning, were you not?

A. Yes.

Q. You heard all the testimony?

A. Yes.

Q. How do you account for the statement that the Gelsis made to Mr. Richardson?

A. I don't think she would make the statement [73] voluntarily.

(Testimony of Peter Guito.)

Q. You think Mr. Richardson forced her to?

A. I think most of these people, particularly Latins, if they are told it is a government man, they are scared, and if a government man comes in he can get almost anything out of them.

Q. What is the connection between being afraid and being a government officer and making some special statement?

A. In what way?

Q. I can understand when a person is frightened they might run or they might hide, but why should they choose to make some particular statement that is not true?

A. If a government agent comes in, they have a fear of them, and they seem to think "Maybe I should do this or do that, or the other," they may have broken the law.

Q. So out of their fear they brought this out of their imagination?

A. I don't think they brought it out of their imagination. I will tell you, I spoke to her Monday, I made my regular call Monday, and she said this man came and said, "You are not in the grocery business, what are you going to do with anchovies?"

Q. What was the rest of the conversation?

A. Well, that is all.

Mr. Coblentz: That is all .

HENRY J. HAAF,

called as a witness by the defendant, sworn.

The Clerk: Will you state your name to the Court? [74] A. Henry J. Haaf.

Mr. Beedy: Q. Mr. Haaf, you are one of the vice-presidents and directors of Coffin-Redington Co.?

A. That is correct.

Q. In charge of sales?

A. Drugs sold to drug stores, hospitals, government agencies, etc.

Q. How long have you been with the company?

A. 32 years.

Q. Mr. Haaf, when whisky became scarce toward the end of 1942 isn't it a fact that the drug division was required to establish a system of allocation?

A. That is right. In fact, the supply was so small that we had to work with, we went to considerable length to set up a system of allocation so as to effect a fair and equitable distribution of what we had to send out.

Q. That is to customers?

A. Yes, that was based on previous purchase records.

Q. Did the liquor division give you monthly a list of the articles that were available for distribution? A. That is correct.

Q. Then what did you do with them?

A. Upon receipt of the list from Mr. Schloss I then looked it over and then returned it to John Sheehan, who took care of the allocation; in other words,

(Testimony of Henry J. Haaf.)

he had a set of books in which previous purchase records were listed, that is, speaking of drug accounts—there are some six hundred odd stores which had liquor licenses, and of those there were approximately 452 which had purchase records and we made an allotment to them. [75]

Q. In the drug division did salesmen call on them for purchases of liquor at that time?

A. Not at that time.

Q. How did you handle that?

A. The distribution of liquor?

Q. To drug stores.

A. The distribution of liquor to drug stores was handled entirely by the office.

Q. This system of salesmen not calling on them for liquor orders continued up until when?

A. August 1, 1944.

Q. Prior to that the work was done at the office, is that right?

A. Yes.

Q. And Mr. Sheehan is the one who sent them a list of the items that had been allocated to each?

A. Yes.

Q. Both liquor and drugs, isn't that right?

A. Not drugs.

Q. Just liquor?

A. That is right.

Q. What was the company's policy in relation to return of liquor that was sent to the drug companies?

A. At numerous sales meetings the men were told what our policy was, and were told the fact that the merchandise which we were sending out was sent out as a helpful gesture to our customers, with the full privilege of returning it if the merchandise was not

(Testimony of Henry J. Haaf.)

wanted, or if it was not something that they could use.

Q. Did you send out a bulletin to that effect?

A. I did.

Q. Have you a copy of that?

A. There are two, one dated June 22 and one dated August 4.

The Court: We will take a short recess.

(Recess.) [76]

Mr. Beedy: Q. Mr. Coblentz, I showed you this. This, if your Honor please, is interoffice and salesmen correspondence issued by Mr. Haaf to drug store representatives regarding liquor distribution to drug stores. It is headed, "Important instructions, read carefully." It is quite long, and the only part of it that I think is pertinent to what I am asking Mr. Haaf now is this paragraph on page 2, which reads as follows:

"We have never arbitrarily sent goods to customers and what goods have been sent in the past were always with the distinct understanding that it was on a voluntary basis and sent as a helpful gesture, and could be returned if desired."

Now, referring to that, Mr. Haaf, did you frequently or on occasions get returned items?

A. We did get some, yes; in fact, we have a number of credit memoranda here to support that.

Q. Where your drug store purchasers have returned liquor items of one kind and another?

A. That is correct.

(Testimony of Henry J. Haaf.)

Mr. Beedy: I suppose it won't be necessary to introduce these in evidence, because they are quite bulky, but we will have it marked for identification.

(The circular was marked Defendant's Exhibit A for Identification.)

Q. Did Mrs. Parker's Pharmacy in Berkeley, or Mrs. Parker's store, ever return any goods for credit?

A. She returned drugs, [77] but there is no record of liquor having been returned.

Q. But she returned drugs, you say, on occasions? A. Yes.

Q. In other words, you sent her goods, and if she did not want them she would return them?

A. That is right.

Q. That was true of liquor, was it?

A. That would include liquor.

Q. Have you ever received any complaints, either orally or written, from Mrs. Parker?

A. Never.

Q. As a matter of fact, Mr. Haaf, in the drug business competition is very keen, is it not?

A. It is very keen, indeed.

Q. It is important to maintain good will for the company, and you have endeavored to do that by giving the druggists who are on your customers' list all possible liquor that you could?

A. That is right.

Mr. Beedy: Mr. Coblentz, I showed you this.

Mr. Coblentz: Yes.

Mr. Beedy: Q. Mr. Haaf I show you a bulletin

(Testimony of Henry J. Haaf.)

addressed to the Drug Service Representatives, dated June 22, 1944. That is your signature, is it not? A. That is correct.

Mr. Beedy: I ask that that be marked for identification.

The Court: It may be marked.

(The bulletin was marked Defendant's Exhibit B for Identification.)

Mr. Beedy: I call particular attention to the second paragraph on page 2 of that communication, which is as follows: [78]

“Tie-in Sales: We have heard rumors of numerous instances where tie-in sales have been practiced by those in the retail and wholesale liquor industry. We have never made any tie-in sales. Whatever merchandise we have sent to a customer has always been entirely upon a volunteer basis and entirely subject to his approval. We have never insisted that the customer buy one product in order to obtain the other. This is absolutely contrary to OPA regulations, both in respect to retail and wholesale sales and those practicing these tie-in sales are in violation of these governmental regulations. We repeat, we have always respected these rules and it is not our intention to do otherwise at any time.”

That, your Honor, is dated June 22, 1944, long before any controversy had arisen, or any examination made by the plaintiff, or anybody else. That is all.

(Testimony of Henry J. Haaf.)

Cross-Examination

Mr. Coblentz: I believe you testified that Exhibit A for Identification, the signature was yours on it? A. Yes.

Q. Do you know what the distribution of that was? A. To our seventeen drug salesmen.

Q. Did it go to any of the liquor salesmen?

A. No, it did not.

Mr. Coblentz: We would like to introduce this in evidence.

(Defendant's Exhibit A was received in evidence and marked Plaintiff's Exhibit 2.) [79]

PLAINTIFF'S EXHIBIT No. 2

Coffin-Redington Company

Inter-Office and Salesmen Correspondence

Aug. 4, 1944

To: Drug Service Representatives.

From: Mr. H. J. Haaf.

LIQUOR DISTRIBUTION TO DRUG STORES

Important Instructions

Read Carefully

Effective at once, with August allotments, the method of allotting Liquor to drug stores has been changed and will be put entirely in the hands of our drug service representatives. Therefore, it is necessary that you read carefully and observe closely the following instructions.

(Testimony of Henry J. Haaf.)

(1) **Liquor Price Books:** It is important for you to examine your Liquor Price Book and determine if it is up to date and complete. If it is not, be sure and requisition the necessary information at once so that you can authoritatively and correctly quote and sell Liquor.

(2) **Sales Record Liquor Purchases:** Liquor purchase records of each customer are being entered in your black sales book. These figures are entered in red ink so as to distinguish them from the drug purchases. It is important to remember that the base period upon which all quotas are figured by distillers are for the first nine months of 1942. Distillation of Whiskey stopped on October 8, 1942 and that was the date when the abnormal period began. Therefore, the figures before October 1st are the ones to consider. While obviously we want to take care of customers who always bought Liquor from us as they are rightfully entitled to it, we do want to keep in mind those accounts who will probably mean something to us in the future when these unusual times are passed.

(3) **Quotas:** From here on all Liquor will be an open item without any limits whatsoever as to quantity, except Whiskey, Gin, and Sweet Wines. Since these items will not be available in plentiful quantities, it will be necessary until conditions change to continue to allot these items in order to effect as fair and equitable distribution of the amounts we receive. Quotas will be given to you twice a month and in allotting these items you

(Testimony of Henry J. Haaf.)

should plan accordingly what customers should be cared for out of number one allotment and which ones out of number two, or both. It will be necessary for you to use the widest discretion and good judgment when dividing this merchandise because our records show we have done a pretty good job and unless it continues so it can result in a terrible headache for you and for us, too. **All Quotas Must Be Completely Withdrawn Within the Month in Which They Are Issued, Otherwise They Are Cancelled.** Orders should be sent to us as they are written and not held and sent to us in a group.

(4) **Writing of Liquor Orders:** All Liquor orders shall be written on liquor order forms and each and every order must be complete, including the Licensee's License Number. All orders must be written on liquor order forms.

(5) **Orders vs. Quotas:** All orders, when received, will be checked against quotas. If orders exceed quotas, same will be cancelled and returned to you.

(6) **Open Items:** Four pages of Open Liquor Items accompany this bulletin, and these are available without limit. The druggist should not make the same mistake as heretofore and think that it is only Bourbon and Gin that he can sell. To be in the liquor business and compete means that he should have on hand at all times a well-rounded and balanced stock. Therefore, you should check all of his stock when taking his orders. To simplify

(Testimony of Henry J. Haaf.)

your price book, and become thoroughly familiar with it, it might be well to immediately go through this and in ink mark "open" before each open item. Preserve these pages of open items as a permanent inventory. New sheets will be issued when, and if, necessary. Items appearing on the open list are items to be Sold and not sent to customers without consultation. We have never arbitrarily sent goods to customers and what goods have been sent in the past were always with the distinct understanding that it was on a voluntary basis and sent as a helpful gesture and could be returned if desired.

(7) Case Lots: While it will sometimes be necessary, because of limited quantities of quota items, to sell in less than case lots, this should be avoided wherever possible because the cost of handling less than full cases is extremely high.

(8) Distillers' Orders: With most every allocation there will come to you some Pink Order Slips, giving you customer's name and address and kind and quantity of Liquor the distillers have sent in to us to be shipped only to that customer and no one else. You Are to Write Up an Order for the Goods Named, Attaching the Pink Order Form to Your Order and Both of Which Must Be Returned to Us (Order and Pink Form Together). In order that you will have a complete knowledge of all Liquor going into your territory, these distiller's orders will be sent to you for attention. In some instances, you may consider the merchandise sent

(Testimony of Henry J. Haaf.)

as being sufficient and in others you may want to add some of your allotted or other goods to them. However, we believe it is well to check the stocks of each and every dealer, particularly when Whiskey is allotted, as it gives you an entree to his Liquor inventory and usually a very sizable order can be accumulated by this method. Another thing is that in a number of instances these orders are for less than case lots and you will probably want to build these up into larger orders, by adding other merchandise to this and making one shipment in all, thereby saving considerable expense. Remember, we do not prepay freight on liquor in less than case lots.

Comments: With the rapidly changing conditions in the Liquor Picture, it means that while certain items will necessarily continue to be rationed, on the other hand there will be a great many items that necessarily will have to be sold. The drug division must assume its fair share of responsibility in building up a predominant position of our Liquor Division.

All of you will recognize the fact that today the druggist is awakened to the possibilities that the sale of Liquor offers by correct merchandising. This is evidenced by the amount of display space that is now assigned to Liquor in the drug stores.

We believe this bulletin covers all questions but should you have any in mind, do not hesitate to ask them and do it promptly. We want this operation

(Testimony of Henry J. Haaf.)

to run smoothly and it should do so if you handle this correctly.

Yours very truly,

COFFIN-REDINGTON CO.

H. J. HAAF,

Vice-President in Charge of
Sales.

HJH:HP

P. S. Your first allocation accompanies this bulletin. Your sales record book will be completed in a day or two and forwarded to you then. A supply of liquor orders forms has been sent you today.

Mr. Coblentz: I will show you Defendant's Exhibit B for Identification, on which you say also appears your signature?

A. That is right.

Q. Do you know the distribution of that one?

A. The same as the other.

Mr. Coblentz: We would like to offer this in evidence.

The Court: It may be admitted and marked.

(Defendant's Exhibit B for Identification
was marked Plaintiff's Exhibit 3 in evidence.)

(Testimony of Henry J. Haaf.)

PLAINTIFF'S EXHIBIT No. 3

Coffin-Redington Company

Inter-Office and Salesmen Correspondence

June 22, 1944

To: Drug Service Reps.

From: Mr. H. J. Haaf

LIQUOR

New Developments: You undoubtedly have read the news releases concerning the action of the Government in releasing all of the August Alcohol production for beverage purposes. It is estimated that this will total 25 to 30 million gallons of 190 proof Alcohol and when reduced to beverage spirits this will total approximately 50 million gallons.

There is no question but what this will relieve the tremendous pressure which has been caused by the shortage of all Liquors. No effect should be felt in this market until some time toward the end of September, except possibly for Gin which might become available earlier.

There will be more plentiful supplies of Blended Whiskies, Gin, and Cordials. The receipt of these supplies, of course, depends entirely upon the ability of the distillers to produce and bottle these products and while this may appear to be a very simple operation, the distillers, themselves, are confronted with numerous and tremendous problems. This is due to the fact that Bottles and Cartons are critical

(Testimony of Henry J. Haaf.)

and most difficult to obtain. Therefore, it will not be as easy as drawing water from a spigot as some people believe.

Prices: Now as to the question of price, all new merchandise will be sold under O.P.A. Regulations. It must be kept in mind that so far as Federal Taxes are concerned the same rates will apply to Beverage Alcohol, or products therefrom, as it does to Straight Whiskey, same proof. Some customers are of the opinion that Beverage Spirits take a lesser tax. This is not true. In fact, Blended Whiskey is actually taxed higher because it is assessed the 30c per gallon Rectifying Tax in addition to the usual Spirit Tax.

Inventories, Odd Items: Many customers are already asking how they can dispose of Rum, Imported Gin, Tiquella, Brandy, Vodka, etc., etc. "Can I cut prices?" and numerous other questions are being asked. It appears that some of the trade are becoming panicky. Right here it should be borne in mind that where it is thought necessary everyone has about sixty days to reduce inventories. Furthermore, while the demand for these items will unquestionably drop, it will not cease entirely. Furthermore, good brands of Brandy and Rum should not be sacrificed for this is good merchandise. Very little Brandy was made in California last year due to the high cost of grapes. It looks the same this year. Rum quotas for the last half of 1944 have been drastically reduced so that new Imports will be very small. The best Rum season is ahead of us

(Testimony of Henry J. Haaf.)

during the Fall months and the Holidays. It is our opinion that where a dealer has excessive stocks of these items that he should, however, get his house in order and immediately start reducing his inventory to normal amounts. He should do this in orderly fashion, but he should attempt to accomplish this within the next thirty or sixty days before products resulting from this Alcohol release become available.

Liquor Fair Trade Prices Suspended: Where dealers find it advisable to reduce stocks and are asking if it is permissible to reduce prices, it might be well to note that Liquor Fair Trade Prices have been suspended for the balance of the year by the State Board of Equalization. In other words, the retailer has a free hand in disposing of his merchandise at whatever prices he is inclined to sell no matter how low he goes. On the other hand, the O.P.A. Maximum Price Regulations remain in full effect and he must observe ceiling prices in all instances. He cannot sell demand goods above ceiling prices. Therefore, you will see that the maximum price limits remain in full effect and only the minimum have been removed.

Return Goods: Under the State Board of Equalization Ruling, which has been in effect for a number of years past, no goods are returnable for credit.

Tie-In Sales: We have heard rumors of numerous instances where tie-in sales have been practiced by those in the retail and wholesale liquor industry. We have never made any tie-in sales. Whatever

(Testimony of Henry J. Haaf.)

merchandise we have sent to a customer has always been entirely upon a volunteer basis and entirely subject to his approval. We have never insisted that the customer buy one product in order to obtain the other. This is absolutely contrary to O.P.A. Regulations, both in respect to retail and wholesale sales and those practicing these tie-in sales are in violation of these governmental regulations. We repeat, we have always respected these rules and it is not our intention to do otherwise at any time.

Yours very truly,

COFFIN-REDINGTON CO.

H. J. HAAF,

Vice-President in Charge of
Sales.

HJH:HP

Mr. Coblentz: I think that is all.

Mr. Beedy: That is all.

JOHN SHEEHAN,

called as a witness by defendant; sworn.

The Clerk: Will you please state your name to the Court?

A. John Sheehan.

Mr. Beedy: Q. Mr. Sheehan, you are employed by Coffin-Redington & Co. are you?

A. That is right.

(Testimony of John Sheehan.)

Q. How long have you been so employed?

A. Four years.

Q. In what department are you employed?

A. At the present time in the sales department.

Q. Were you in the drug division before that?

A. Yes.

Q. In the period from February to July, 1944, where were you employed?

A. I was in the sales department, attached to allocating liquor. [80]

Q. To the drug stores?

A. To the drug stores.

Q. How did you do that?

A. By a process of allocation of the sales to the drug stores, themselves.

Q. Did you allocate on that basis to the customers of the drug division the whisky?

A. That is right.

Q. Who gave you the list of the available liquor merchandise?

A. Those lists were made by my predecessor to the time I took over the job.

Q. Mr. Haaf? A. Yes.

Q. Mr. Haaf would make them up and send them to you for the allocation? A. Yes.

Q. You would write up the orders on the basis of what he sent to you? A. Yes.

Q. Would you make notes on the accounts as to the likes and dislikes of particular customers?

A. I would.

Q. And in making up the orders would the likes and dislikes guide you? A. Yes.

(Testimony of John Sheehan.)

Q. For instance, if you had a note in there that somebody liked Marin Rum, or Baret Brandy, you made a note of that, did you? A. Yes.

Q. Would you try to allocate that item to him when you next made your allocation?

A. That is right.

Q. Now, taking the account of the West Berkeley Drug Store, that is Mrs. Parker, isn't it?

A. Yes.

Q. Is she an old customer of the company?

A. As far as I know. [81]

Q. She has been ever since you have been there?

A. That is right.

Q. And was she a valued customer?

A. I would say from looking at the purchases she was.

Q. The invoice written up March 2, 1944, shipped on March 8th, that was an allotment that you made, was it not? A. Yes.

Q. Do you recall that invoice at all, Mr. Sheehan? A. No, I do not.

Q. Now, it is claimed that she was required to buy Marin rum in order to obtain whisky, buy one-half case of Marin Rum Gold in order to obtain whisky, that is, half a case of Calvert Special, half a case of Old Fitz. Do you know what the facts were in regard to that?

A. That was all liquor that was sent on approval.

Q. She knew that she had that right, didn't she?

A. If she didn't want it she could always return it for credit.

(Testimony of John Sheehan.)

Q. All she had to do was notify the company and it would take it back? A. Yes.

Q. Take the invoice that was written up in May, May 25, May 17. Do those fall in the same category? A. Yes.

Q. Those were, among other things, for half a case of Nautical Rum and some tequila, as well as whisky? A. Yes.

Q. You made the allocation based on the available supply you had which could be given to her, is that it? A. That is right. [82]

Q. None of it ever came back?

A. Not to my knowledge, no.

Q. In June there is a copy of an invoice written up for her in which it was said that she was required to buy two cases of Marin Rum in order to get whisky, and that is true also in July. That was sent to her in the same manner as the previous shipment, was it not?

A. That is right, everything on approval.

Q. Did you ever telephone or write to Mrs. Parker or the West Berkeley Pharmacy, in regard to liquor orders?

A. Not that I can remember.

Q. Many druggists did telephone in, didn't they, about orders? A. Yes.

Q. But you don't recall that she ever did?

A. No.

Mr. Beedy: That is all.

Mr. Coblentz: No cross-examination.

HERMAN DUFFY,

called as a witness by the defendant; sworn.

The Clerk: Q. Will you state your name to the Court?

A. Herman Duffy.

Mr. Beedy: Q. Are you employed by Coffin-Redington Company, Mr. Duffy? A. I am.

Q. How long have you been so employed?

A. 22 years.

Q. What are your duties?

A. Wholesale drug representative.

Q. Do you know Mrs. Parker, of the West Berkeley Pharmacy? A. I do. [83]

Q. Was it your business to call on her from time to time? A. Yes.

Q. Since when?

A. Since 1937, when she acquired the store.

Q. You have known her for a long time?

A. I have known her for seven years.

Q. You would see her often?

A. Twice a month.

Q. During the period in controversy in this case, that is, between February and July, 1944, did you call on her in the same way, that is, every two weeks? A. I did.

Q. You never took any orders for liquor, did you? A. No.

Q. That matter was handled from the office in the manner stated by Mr. Haaf and Mr. Sheehan, is that correct? A. Yes.

(Testimony of Herman Duffy.)

Q. Did she ever at any time make any complaint concerning the liquor that she received from the company? A. No, never.

Q. You used to talk to her, did you not, about the drug business, and her business?

A. I did.

Q. Now, on August 1, 1944, there was a change made in the method of taking orders for liquor, wasn't there? A. That is correct.

Q. Did you after that time discuss the liquor orders with her, I mean take orders for liquor from her? A. I did.

Q. The company at that time had abandoned the policy of allocating liquor from the office?

A. That is correct.

Q. And were taking orders directly from the drug companies on open items?

A. Open stock items.

Q. She never at any time complained to you?

A. Never. [84]

Mr. Beedy: That is all.

Mr. Coblentz: No questions.

Mr. Beedy: That is the defendant's case, your Honor.

Mr. Coblentz: I would like to recall one of the defendant's witnesses to ask him one or two other questions, Mr. Guito.

PETER GUITO,

recalled for further cross-examination.

Mr. Coblentz: Q. Mr. Guito, you recall testifying earlier that on Monday you called at the Gelsi's and showed them the newspaper article?

A. What?

Q. I will show you a copy of a page of the "Chronicle" of February 26, 1945, which has an item up in the upper right-hand corner that has been marked. Is that the article that you showed her?

A. That is the article that she looked at.

Mr. Coblentz: I will offer this in evidence, if your Honor please.

Mr. Beedy: I see no particular reason for objecting to it, but I don't know what materiality it has in this case, Mr. Coblentz; why should we encumber the record with that?

Mr. Coblentz: At the opening of the case I made a statement that as a part of the scheme of the defendants in reaching witnesses that the defendants, here, had caused this item to be published in a newspaper, and the witness has testified what use he has made of it, and I think it has become material for [85] that reason.

Mr. Beedy: I do not think there is any evidence at all—it does not prove that the defendants in this case had anything to do with the publication of that; as a matter of fact, the defendant in this case very much resented the publication of that, because it holds them up to the public as being violators of the OPA regulations, something no old

(Testimony of Peter Guito.)

respected firm like this ever would want to get into the position of. As a matter of fact, they had nothing to do with that. They were sorry it was ever published. I don't think it proves or tends to prove any issue, whatever, that has been raised in this case.

The Court: I have not heard your objection yet.

Mr. Beedy: I object to it on that ground.

Mr. Coblentz: This witness testified that he showed this article to one of the witnesses who testified here this morning.

The Court: How would that bind Coffin-Redington & Company, a newspaper item?

Mr. Coblentz: It would not bind them, but still it would be in the record as to what he showed this witness.

The Court: State for the record the purpose of this offer.

Mr. Coblentz: The purpose of this offer is so that the record will show what the witness referred to when he said that he did show it to one of the witnesses who testified this morning.

The Court: The objection will be sustained.

Mr. Coblentz: That is all. The plaintiff rests.

Mr. Beedy: Defendant rests.

(Thereupon the case was submitted upon briefs to be filed.)

[Endorsed]: Filed Sept. 26, 1945. [87]

[Endorsed]: No. 11147. United States Circuit Court of Appeals for the Ninth Circuit. Coffin-Redington Company, a corporation, Appellant, vs. Chester Bowles, Administrator, Office of Price Administration, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California Southern Division.

Filed September 26, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 11147

COFFIN REDINGTON COMPANY, a corporation,
Appellant,

Appellant,

vs.

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT WILL RELY; DESIGNA-
TION OF RECORD ON APPEAL

To the Appellee above named, to his attorneys, and
to the Clerk of the above entitled Court:

You and each of you are hereby notified that
the appellant above named adopts, as its statement

of points upon which it intends to rely upon appeal, the statement of points heretofore filed with the Clerk of the United States District Court for the Northern District of California, Southern Division;

You and each of you are hereby further notified that the said appellant desires to have printed as the record on appeal in the above entitled Court, the entire record as certified by the Clerk of the United States District Court for the Northern District of California, Southern Division.

Dated at San Francisco, California, this 24th day of September, 1945.

THOMAS, BEEDY, NELSON &
KING

LOUIS S. BEEDY

JOHN BENNETT KING

Attorneys for Appellant.

Received copy of the foregoing this 24th day of September, 1945.

HERBERT H. BENT

.....

Attorneys for Appellee.

[Endorsed]: Filed Sept. 26, 1945. Paul P. O'Brien, Clerk.

